

**FILED**

APR 8 6 2013

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : CRIMINAL TERM - PART: T-14 SUP COURT, APP. DIV  
FIRST DEPT.

----- X

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment #27/2010

- against -

Cont'd Jury Trial

DAVID DELGADO,

Defendant.

----- X

July 3, 2012

265 East 161st Street  
Bronx, New York 10451

B E F O R E:

HONORABLE DOMINIC R. MASSARO,

J U S T I C E

(Appearances same as previously noted.)

TRICIA L. ROBINSON, CSR, RPR  
Senior Court Reporter

(Whereupon, the following takes place, on the  
record, in open court, in the presence of the Court, the  
assistant district attorneys, defense counsel, the  
defendant and the jury.)

COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom.)

COURT OFFICER: All rise.

**SCANNED**

DATE: MAY 13 2013

BY: *S.L. Owens*

1 (Whereupon, the Court entered the courtroom.)

2 THE COURT: Good morning.

3 JURORS: Good morning.

4 THE COURT: Mr. Clerk.

5 THE CLERK: This is case on trial People of the  
6 State of New York against David Delgado. Let the record  
7 reflect the presence of the district attorney's office,  
8 defense attorney, defendant and all sworn jurors.

9 THE COURT: Madam Forelady, ladies and gentlemen  
10 of the jury, I trust everyone followed the Court's  
11 instructions and no one has anything to report, is that  
12 correct?

13 JURORS: Yes.

14 THE COURT: Very good. We continue on the direct  
15 case of the People and I recall to the witness stand  
16 Detective Banker, please.

17 COURT OFFICER: Witness entering.

18 (Whereupon, the witness entered the courtroom and  
19 takes the stand.)

20 THE WITNESS: Good morning.

21 JURORS: Good morning.

22 THE COURT: Good morning, Detective.

23 THE WITNESS: Good morning, your Honor.

24 THE COURT: I remind you you're under oath.  
25 Please be seated, make yourself comfortable.

1 Can you assure the Court that you did not discuss  
2 your testimony with anyone including the district attorney  
3 during the break?

4 THE WITNESS: Yes, sir.

5 THE COURT: Very good, sir. All right. We  
6 continue on direct examination. Mr. Rosenfeld.

7 MR. ROSENFELD: Thank you. Good morning,  
8 Detective.

9 THE WITNESS: Good morning.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. ROSENFELD:

12 Q Detective, if I can just go back to yesterday. We  
13 were at the moment when you were at the location of Brooklyn  
14 and you apprehended a suspect, correct?

15 A Correct.

16 Q What was the name of the person that you apprehended?

17 A Excuse me. Drawing a blank.

18 THE COURT: Check whatever you wish. Tell us  
19 what it is you're looking at.

20 A Yes, it's David Delgado.

21 MR. CANTOR: He looked at his case file.

22 THE COURT: Review, refresh.

23 A Yes, David Delgado.

24 Q Do you see the person you apprehended back on December  
25 26, 2009, in the courtroom?

1 A Yes, I do.

2 Q Could you please indicate where he's sitting and what  
3 he's wearing?

4 A He's sitting to my left, wearing a pink checkered  
5 shirt.

6 MR. ROSENFELD: Indicating the defendant, your  
7 Honor.

8 THE COURT: Yes, indicating the defendant herein.

9 Q I believe we left off, you said you placed him in  
10 handcuffs?

11 A Yes, I did.

12 Q Please continue. What, if anything, happened next?

13 A After I -- after that, I brought him into his room  
14 where I put a jacket over him covering him over his shoulders,  
15 while he was rear cuffed, shoes were put on him, I helped him  
16 put them on, and then at that point we left the location.

17 Q Where did you go to?

18 A We got into our vehicle and we were gonna go back to  
19 the Bronx at that point.

20 Q Who was in the vehicle with you?

21 A Detective Rentas and Swanston.

22 Q Was the defendant David Delgado in cuffs while he was  
23 in the vehicle?

24 A He was.

25 Q Where were you sitting in the vehicle? Where was he

1 sitting, if you recall?

2 A He was sitting in the rear seat behind the passenger.  
3 I was seated in the rear seat behind the driver.

4 Q And what happened once you were seated in the vehicle?

5 A At about 12:40 hours, we were just pulling off of the  
6 corner there on 50th and Third in Brooklyn and he made a  
7 statement to me.

8 Q And had you said anything to the defendant before he  
9 made that statement?

10 A No, I did not.

11 Q What, if anything, did he say?

12 A Can I -- I wrote it down.

13 THE COURT: Just tell us what it is you're  
14 looking at and the date thereof.

15 THE WITNESS: Yes, sir.

16 A It's from December 26, 12:40 hours, which is 12:40  
17 p.m. in the afternoon. This is my steno book where I kept my  
18 notes throughout the case.

19 Q So Detective, when the defendant made that statement  
20 to you, did you have that steno book out at that point?

21 A No. It was my -- it was in a pocket in my jacket.

22 THE COURT: What was the statement did you say?

23 MR. CANTOR: He didn't make it.

24 THE COURT: Did you get up to that?

25 MR. ROSENFELD: Yes, your Honor, one second.

1 THE COURT: All right. Yes.

2 Q So you had the memo book with you and the defendant  
3 started to talk to you?

4 A Yes.

5 Q What did you do?

6 A I listened to what he said, and then I wrote it down  
7 preserving it on paper.

8 Q And you indicated you have an item with you, that's  
9 what's called a steno book?

10 A Correct.

11 Q Is there a page in the steno book that has writing  
12 that you made back on December 26, 2009?

13 A Yes, there is.

14 Q Is it possible just to remove that page with the  
15 writing that you made when the defendant spoke to you?

16 A Yes, I can (handing).

17 COURT OFFICER: (Handing.)

18 MR. ROSENFELD: Your Honor, may we please have  
19 this item marked People's Exhibit 12 for identification?

20 THE COURT: So deemed People's 12 for  
21 identification.

22 MR. CANTOR: (Handing.)

23 COURT OFFICER: (Handing.)

24 Q Detective, looking at People's Exhibit 9 marked for  
25 identification -- People's Exhibit 12 marked for

1 identification, does that document -- what is that document?

2 A This is the oral statement that the defendant made to  
3 me and then I preserved it onto paper.

4 MR. CANTOR: Let it be offered, Judge. I have no  
5 objection.

6 MR. ROSENFELD: Thank you. At this time, the  
7 People offer People's Exhibit 12 into evidence.

8 THE COURT: All right. There being no objection,  
9 what previously was deemed People's 12 for identification,  
10 is now deemed as having been proffered into and is received  
11 in evidence. You'll mark it at the close of the session.

12 Q Detective, looking at People's Exhibit 12 in evidence,  
13 could you please tell the jury what it is that the defendant  
14 did -- that Delgado said to you in the vehicle back on December  
15 26, 2009?

16 A "Yo, that guy kept fucking with me all night. He was  
17 drunk. They took him outside. When he came back, he grabbed  
18 my arm. I saw a knife on the table and grab it and swung it at  
19 him. The people in the party grabbed me, then I ran."

20 Q Was the vehicle moving as he was saying this?

21 A Yeah, it was, when we were pulling off of the corner  
22 on 50th and Third.

23 Q What language did he say this to you in?

24 A Every statement was in English.

25 Q And you indicated you wrote it down in your memo book.

1 Then what, if anything, happens?

2 A About ten minutes later, at 12:50 hours, he made  
3 another oral statement.

4 Q What, if anything, did the defendant say to you the  
5 second time?

6 A "Yo, I really fucked up this time."

7 Q All right. Please continue. What happened --

8 MR. ROSENFELD: I'm sorry. Withdrawn.

9 Q Had you said anything to the defendant before he made  
10 that second statement?

11 A No, I did not.

12 Q Did you write down the second statement?

13 A No, I did not.

14 MR. ROSENFELD: Your Honor, may I please have  
15 People's Exhibit 12?

16 THE WITNESS: (Hanging.)

17 COURT OFFICER: (Hanging.)

18 MR. ROSENFELD: Publishing it for the jury.

19 (Whereupon, the item was displayed in open  
20 court.)

21 MR. ROSENFELD: Let the record indicate that  
22 People's Exhibit 12 has been published.

23 THE COURT: So indicated.

24 Q All right. Detective, please continue. Did you  
25 continue to proceed in your vehicle at that point?



1 A Yes, we drove back to the Bronx.

2 Q Specifically, where did you go to?

3 A To the 43 Precinct.

4 Q What happened when you arrived -- did there come a  
5 time when you arrived at the 43 Precinct?

6 A Yes.

7 Q What happened when you arrived at the 43 Precinct?

8 A We got there somewhere just around 2 o'clock in the  
9 afternoon. At that point, he was brought upstairs, put into  
10 the cell area where I took the jacket off of him, uncuffed him,  
11 and we actually went and got food at that point for ourselves  
12 and for him.

13 Q Now, please explain the setup of where you took the  
14 defendant and where you placed him.

15 A It's inside the 43 Precinct on the second floor. The  
16 detectives work separate than the cops. We have our own office  
17 upstairs. You go up a flight of stairs, detective squad is  
18 clearly marked. When you walk through the door, you make a  
19 left, there's a cell area probably like eight by eight, and he  
20 was the only one there. I walked him into that cell, took the  
21 jacket off him and then uncuffed him, and then he sat down at  
22 that point.

23 Q You indicated then something about food?

24 A Yeah, at 14:10 hours we had gotten some pizza. He had  
25 two slices of Sicilian, a soda.

1 Q When you say "he" who are you referring to?

2 A I'm sorry. The defendant.

3 Q After you gave the defendant --

4 MR. CANTOR: What time was that at, your Honor?

5 THE COURT: There's no question.

6 MR. CANTOR: I know.

7 THE COURT: You may ask him that on cross  
8 examination.

9 Please continue.

10 Q After you gave the defendant some food, what, if  
11 anything, happened?

12 A At about 14:50, 2:50 p.m., he was then walked from the  
13 cell into the interview room, and at 2:55 is when I read him  
14 his Miranda warnings, asked him all the questions, he responded  
15 and then we marked it on the paper and then he gave a written  
16 statement.

17 Q Please explain this room that you took the defendant  
18 to where the Miranda warnings took place and the statement.

19 A It's fifteen feet away from the cell. When you walk  
20 out of the cell, you make a right, it's right there. It's a  
21 room that's probably twelve feet by eight feet long. There's a  
22 solid wooden door that locks from the outside so you can't see  
23 in from that area, and then to the left of that door is another  
24 wall that's a one-way mirror, so inside all you see is a  
25 mirror, but you could view it from outside in the detective's

1 office.

2 Q And who else was present in that room?

3 A It was me, Detective McSloy and the defendant.

4 Q And what was the first thing you did once you had him  
5 in that room?

6 A Once I had him in that room, he sat down behind the  
7 table that was there in the chair and I started reading him the  
8 Miranda warnings.

9 Q And was he cuffed at that point?

10 A I believe he was single cuffed, one arm free, one hand  
11 cuffed.

12 MR. CANTOR: I'm sorry?

13 A One hand cuffed, one hand free.

14 Q You indicated you read something called Miranda  
15 warnings?

16 A I did.

17 Q What are the Miranda Warnings and why did you read  
18 them?

19 A It's a set of questions asked to the defendant by the  
20 detective notifying him of what his rights are in this  
21 situation.

22 MR. CANTOR: Judge, I move to strike. The  
23 question is what are the Miranda rights.

24 MR. ROSENFELD: He's explaining them.

25 MR. CANTOR: No, he isn't. What are Miranda

1 rights is the question.

2 THE COURT: I'll allow him to extrapolate.

3 A I was reading him the Miranda warnings making him  
4 aware of his rights at that time and then he responded yes to  
5 every question I asked. I marked it yes, he initialed it yes,  
6 he signed it, I signed it, and then we began the written  
7 statement.

8 MR. ROSENFELD: Your Honor, I ask this piece of  
9 paper be marked People's Exhibit 13 for identification.

10 THE COURT: So deemed, sir.

11 MR. CANTOR: Can I see it, your Honor?

12 THE COURT: You may.

13 MR. ROSENFELD: (Hanging.)

14 COURT OFFICER: (Hanging.)

15 MR. CANTOR: (Hanging.)

16 COURT OFFICER: (Hanging.)

17 Q Detective, I ask you --

18 MR. CANTOR: What is that? What number? 13?

19 THE COURT: Yes, deemed 13.

20 MR. CANTOR: Thank you.

21 MR. ROSENFELD: May I continue?

22 Q Detective, I ask you to look at what's been deemed  
23 marked People's Exhibit 13 for identification. Do you  
24 recognize what that is?

25 A Yes.

1 Q What is that?

2 A This is the original copy of the document that I used  
3 to read off of to the defendant in which he and I both signed,  
4 as well as Detective McSloy.

5 Q That's how you recognize the original document?

6 A Yes, it's written in ink in my handwriting and the  
7 defendant's.

8 MR. ROSENFELD: At this time, I move People's  
9 Exhibit 13 into evidence.

10 THE COURT: Share it.

11 MR. CANTOR: No objection, Judge.

12 THE COURT: There being no objection, what  
13 previously was deemed as People's 13 for identification is  
14 now deemed as having been proffered into and is received in  
15 evidence People's 13. We'll mark it at the close of the  
16 session.

17 Q Detective, could you please tell the ladies and  
18 gentlemen of the jury exactly what transpired during the time  
19 that you said you read the defendant his Miranda warnings?

20 MR. CANTOR: Has it been marked into evidence  
21 yet, Judge?

22 THE COURT: No. It's deemed.

23 MR. ROSENFELD: It's deemed.

24 MR. CANTOR: Judge, I'm addressing the Court, can  
25 it be marked presently?

1 THE COURT: It's deemed. I said mark it at the  
2 close of the session.

3 Move on.

4 MR. ROSENFELD: Thank you.

5 Q You may respond, Detective.

6 A I wrote out 43 Precinct, 43 PDU interview room for  
7 location. I wrote the case number 3527, defendant's name  
8 Delgado, date 12/26/09, detective assigned Banker, time 14:55,  
9 which is 2:55 in the afternoon, and witness McSloy. I then  
10 read all six statements to the defendant in which he responded  
11 yes, then initialed it.

12 Q Please go through each of the statements that you read  
13 to the defendant and what transpired when you read the  
14 statements after each statement.

15 A I said to the defendant, you have the right to remain  
16 silent and refuse to answer any questions, do you understand?  
17 The subject replied yes. I wrote yes, he initialed it.

18 Q How did he initial it?

19 A D.D.

20 Q Please continue.

21 A I then stated anything you say could be used against  
22 you in a court of law, do you understand? Subject replied yes,  
23 I wrote yes, he then initialed it.

24 You have the right to consult an attorney before  
25 speaking to the police and to have an attorney present during

1 any questioning now or in the future, do you understand?

2 Subject replied yes, I wrote yes, he initialed it.

3 If you cannot afford an attorney, one will be provided  
4 for you without cost, do you understand? Subject replied yes,  
5 I wrote yes, he then initialed it.

6 If you don't have an attorney available, you have the  
7 right to remain silent until you've had the opportunity to  
8 consult with one, do you understand? Subject replied yes, I  
9 wrote yes, he initialed it.

10 Now that I've advised you of your rights, are you  
11 willing to answer questions? Subject replied yes, I wrote yes,  
12 he then initialed it.

13 I then as he had the paper, I asked him to sign his  
14 name and then print his name underneath that, which he did. I  
15 then took the document back, signed my name, wrote my shield  
16 number 282, handed it to Detective McSloy who was present, he  
17 then signed it with his name and then wrote his shield number  
18 1448.

19 MR. ROSENFELD: Thank you. May I please have  
20 People's Exhibit 13.

21 THE WITNESS: (Hanging.)

22 COURT OFFICER: (Hanging.)

23 MR. ROSENFELD: May the record indicate that I am  
24 publishing People's Exhibit 13 to the jury.

25 (Whereupon, the item was displayed in open

1 court.)

2 MR. ROSENFELD: May the record indicate that  
3 what's been deemed People's Exhibit 13 into evidence has  
4 been published to the jury.

5 THE COURT: So indicated.

6 Q Detective, up until that moment, had the defendant  
7 ever asked for an attorney?

8 A No, never.

9 Q Up until that moment, had you ever observed the  
10 defendant to be in need of any medical attention?

11 A No, never.

12 Q Did the defendant ever ask you for any medical  
13 attention?

14 A No, never.

15 Q What language did you communicate with the defendant  
16 in?

17 A English always.

18 Q Did he ever indicate to you at any time that he did  
19 not understand any of your questions?

20 A No, never.

21 Q Did you understand the defendant when he responded to  
22 you?

23 A Always.

24 Q At any time, did the defendant appear to be from the  
25 time you first apprehended him to the time you took the



1 statement to be intoxicated?

2 A No.

3 Q Did he appear to be high on drugs based on your  
4 experience?

5 MR. CANTOR: Objection.

6 THE COURT: Overruled.

7 A No.

8 Q Did the defendant ever have any difficulty walking  
9 whether it was to the car or into the precinct or up to the  
10 cell?

11 A No.

12 Q All right. Once you read the defendant the Miranda  
13 warnings contained in People's Exhibit 13, what, if anything,  
14 transpired?

15 A I then handed him two blank pages of paper. That's  
16 the forms that we use for written statements from the Police  
17 Department. It's a basic form. Handed it to him, gave him a  
18 pen and at that point he started writing. Myself and Detective  
19 McSloy left the room. I walked out the door, made the right  
20 and another quick right and went to the window where the  
21 one-way mirror is and I observed him writing the statement. At  
22 that point, I told him if you need anything or when you're  
23 done, just yell out detective and I will be right there.

24 Q Now, the paper you gave him, did that paper have any  
25 handwriting on it when you gave it to him?

1 A When I handed it to him, I just filled out the top  
2 caption, which is like the pedigree information stuff.

3 Q Okay. How about the actual body of the pages, did  
4 that have any handwriting on it?

5 A No.

6 Q If I can back up a moment. The Miranda warnings we  
7 saw, People's Exhibit 13, were in English and Spanish, correct?

8 A Yes.

9 Q And did the defendant ever request to you to read it  
10 in Spanish?

11 A No.

12 Q When you gave the defendant these instructions about  
13 the paper, did he ask you any questions about it?

14 A No.

15 MR. CANTOR: Papers.

16 MR. ROSENFELD: There were two pages, yes, your  
17 Honor. Thank you.

18 Your Honor, at this time, I would ask these two  
19 pages be marked People's Exhibit 14 collectively.

20 MR. CANTOR: Let them be marked in evidence. I  
21 have no objection.

22 THE COURT: So deemed People's 14 for  
23 identification.

24 MR. CANTOR: I have no objection if they come  
25 into evidence.

tr/a Det. Banker - People - Direct

1 THE COURT: Thank you, Mr. Cantor.

2 MR. ROSENFELD: People would move People's  
3 Exhibit 14 into evidence on consent.

4 MR. CANTOR: Yes, on consent.

5 THE COURT: There being no objection, what  
6 previously was deemed People's 14 for identification is now  
7 proffered into and received in evidence. You will mark it  
8 at the close of the session.

9 MR. ROSENFELD: Thank you (handing).

10 COURT OFFICER: (Handing.)

11 MR. ROSENFELD: Indicate the documents have been  
12 given to Detective Banker.

13 Q Detective Banker, I ask you to look at People's  
14 Exhibit 14 now in evidence. What are those pages that you are  
15 holding in front of you?

16 A This is the statement that was written by the  
17 defendant.

18 Q Those are the same two pages that you had given him  
19 but were blank back on December 26, 2009, except for the  
20 heading?

21 A Yes.

22 Q What did you put on that paper before you handed it to  
23 the defendant?

24 A 43 Precinct, case number 3527, date 12/26/09, time  
25 15:05 hours.

1 Q Then you gave the defendant some instructions?

2 A I did.

3 Q What, if anything, did you say to him at that point  
4 once you filled out the header?

5 A I handed him a piece of papers and a pen and told him  
6 to write out the statement, at which point when you're finished  
7 just yell out detective, I will be outside. I'll come in and  
8 get it from him.

9 Q What did the defendant do at that point?

10 A He started writing.

11 Q And the pages that you have in front of you, do they  
12 embody the entire statement that the defendant wrote out back  
13 on December 26, 2009?

14 A Yes, they do.

15 Q Detective, I would ask at this point to please read  
16 the statement that the defendant wrote back on December 26,  
17 2009. Take your time.

18 A "I David Delgad state that Christmas Eve I met my  
19 girlfriend Margie to go to a party. It was 2033 McGraw Avenue,  
20 apartment 3-D. I walked to the apartment and I was introduced  
21 to people and that -- and that when Sosa started saying that if  
22 I disrespect Margie --"

23 MR. CANTOR: "Disrespected."

24 A Correct. "Disrespected Margie that I was going to  
25 have problems with him and everybody and I said okay, I get it.

tr/a Det. Banker - People - Direct

1 And I started to drink, associated with people at the party and  
2 he came at me again saying the thing tell me that I -- that I  
3 was going to have problems with her and I got nervous and --"

4 MR. CANTOR: "With him."

5 THE COURT: Continue, Detective.

6 MR. CANTOR: "With him."

7 THE COURT: Please, Mr. Cantor.

8 MR. CANTOR: That's what it says, Judge.

9 THE COURT: You'll have an opportunity.

10 A "Going to have problems with him, and I -- I got  
11 nervous and he was disrespected everybody at the party and --  
12 and he came back at me again and I got feared at him 'cause  
13 he's bigger than me. I was scared at the point that he was  
14 going to attack me so I took a knife from the kitchen because I  
15 was already scared at him. So when I was about to leave the  
16 party, he came at me again and told me to remember that if I  
17 fuck around with Margie that I was going to get hurt by him.  
18 So when I went to walk away Sosa grab me and that's when I took  
19 the knife out of my pocket" --

20 MR. CANTOR: No out of. "Out my pocket."

21 A "Out my pocket and hit him -- was -- I -- I was  
22 already scared and nervous for my safety. I not the person to  
23 do thing like this. It wasn't planned. I'm sorry for what  
24 went down that night. I was scared for my life. And after I  
25 leave the party, I ran out of the apartment and took a cab and

1 I -- and I don't remember where is the knife." Signed David  
2 Delgado.

3 Q Do you recall approximately how much time it took him  
4 to write out that statement?

5 A Between ten and fifteen minutes.

6 Q Approximately --

7 MR. ROSENFELD: Withdrawn.

8 Q You indicated you were watching him during this time  
9 or at some point?

10 A I was.

11 Q And at any point while he was writing the statement,  
12 did he ask you to come into the room?

13 A No.

14 Q Please continue. What happened after you were  
15 watching him write the statement?

16 A He yelled out detective, I came in the room. I asked  
17 him to make a swirled mark line on the remaining space of the  
18 paper so nothing could be added in that area in which he made a  
19 swirl mark and then signed it David Delgado. I then took the  
20 document, signed it, wrote 282, my shield number on it, gave it  
21 to Detective McSloy who signed it, wrote his shield number 1448  
22 on it. I then took page one and wrote one of two on the top,  
23 and on page two I wrote two of two on the top.

24 MR. ROSENFELD: Your Honor, may I please have  
25 People's Exhibit 14 in evidence?

tr/a Det. Banker - People - Direct

1473A

1 THE COURT: Yes.

2 A (Hanging.)

3 COURT OFFICER: (Hanging.)

4 MR. ROSENFELD: At this time, I'm going to  
5 publish People's Exhibit 14 into evidence, two pages, first  
6 page one.

7 (Whereupon, the item was displayed in open  
8 court.)

9 I just published page one. Now I'm publishing  
10 page two People's Exhibit 14.

11 (Whereupon, the item was displayed in open  
12 court.)

13 (Continued on next page.)  
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People - DETECTIVE KENNETH BANKER - continued direct 1474

1 Q. After the defendant called out detective did you go  
2 into the room?

3 MR. CANTOR: Objection.

4 THE COURT: After, I'm sorry, I didn't hear the  
5 question. Can you repeat it, please?

6 MR. ROSENFELD: Sure.

7 Q. After the defendant called out detective did you go  
8 into the room?

9 THE COURT: After defendant?

10 MR. CANTOR: Called out detective did you go --

11 THE COURT: Pulled out?

12 MR. CANTOR: Called out.

13 MR. ROSENFELD: Called out.

14 THE COURT: He called out detective?

15 MR. CANTOR: Yes and there is an objection.

16 There is no testimony to that affect.

17 THE COURT: Rephrase.

18 Q. Detective, you indicated -- I will back up the  
19 question I asked before. You were watching the defendant while  
20 he was writing the statement?

21 A. I was.

22 Q. And did there come a time that something happened when  
23 you finished writing the statement?

24 A. Yes.

25 Q. What happened?

B-1jb



People - DETECTIVE KENNETH BANKER - continued direct

1475

1 A. He said detective, at which point I walked out of the  
2 corner and through that wooden door to him and sat back down at  
3 the interview table.

4 Q. And that's when you say you signed the rest of it?

5 A. Yes.

6 Q. Now, you notice on People's Exhibit 14 and I am  
7 looking first at page one, there is some cross outs. So I am  
8 directing your attention to the lines he came back at me  
9 between -- before the word again there is a cross out?

10 A. Yes.

11 Q. And then on the two lines below that he is bigger than  
12 me there is another cross out?

13 A. Yes.

14 Q. Who crossed those out?

15 A. He did while he was writing it originally.

16 Q. Okay. You had nothing to do with those cross outs,  
17 did you?

18 A. No.

19 Q. And on page two in the middle again there is a cross  
20 out after the word safety?

21 A. Yes.

22 Q. And then there is another cross out below that after  
23 the word the person to do there is a cross out, correct?

24 A. Correct.

25 Q. Did you have anything to do with that crossing out?

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct 1476

1 A. No, the defendant did that of his own.

2 Q. Thank you. After you went back in the room did you  
3 review the statement?

4 A. I did.

5 Q. Did the defendant say anything or indicate to you  
6 anything further about the statement?

7 A. No, he did not.

8 Q. What, if anything, did you do at that point?

9 A. At that point I safe guarded it and he actually asked  
10 to use the bathroom and to get some water in which he did, we  
11 took him.

12 Q. At some point either at that moment or before had the  
13 Bronx District Attorney's office been contacted?

14 MR. CANTOR: Judge, I object to the leading.  
15 Can't the witness testify rather than the prosecutor lead?  
16 Can't the witness testify?

17 MR. ROSENFELD: Objection to the colloquy, your  
18 Honor.

19 MR. CANTOR: Your Honor.

20 MR. ROSENFELD: Objection.

21 THE COURT: The objection is overruled.

22 MR. CANTOR: The exception is noted. You don't  
23 think...

24 Q. You may answer.

25 A. Can you please ask the question, again?

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct

1477

1 Q. Sure. At some point was the Bronx District Attorney's  
2 office contacted?

3 A. Yes.

4 Q. And at some point did there come a time that some  
5 representatives from the Bronx District Attorney's office  
6 responded to the four three precinct?

7 A. Yes.

8 Q. What was the purpose in contacting the Bronx District  
9 Attorney's office?

10 MR. CANTOR: He was the one who did it.

11 THE COURT: If he knows.

12 MR. CANTOR: No, that would be hearsay if he was  
13 the one who did it.

14 THE COURT: If he knows, I said.

15 A. The D.A.'s office was contacted and responded to the  
16 43rd Precinct to conduct a video statement of the defendant.

17 Q. Had you been involved prior to December 26, 2009, in  
18 taking videotaped statements from defendants at precincts  
19 working with the Bronx District Attorney's office?

20 A. Yes, multiple times.

21 Q. What was -- what happened to the defendant once you  
22 took -- once he gave you the written statement where was he  
23 placed?

24 A. He went to the bathroom, he was given water and then  
25 he was brought back into the cell area where he remained until

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct  
1478

1 the D.A. responded.

2 Q. Once the D.A.'s representatives responded what was  
3 setup; what was done?

4 A. Once A.D.A. Weisberg responded with the video  
5 technician they setup inside the interview room where he gave  
6 his written statement to me. In the corner a video camera and  
7 then a wire goes onto the desk for a little microphone where he  
8 sits. They put a little clock up next to him to his left so  
9 while being viewed the whole time you could see the defendant  
10 and the clock and those two people so you know what time it is  
11 and whose saying what.

12 Q. Okay. And did you have a discussion with A.D.A.  
13 Weisberg prior to taking the videotaped statement?

14 A. Yes.

15 Q. And what proceeded after that?

16 A. The statement was conducted inside of that office.

17 Q. And who was present when the representatives of the  
18 Bronx District Attorney's office A.D.A. Weisberg took the  
19 videotaped statement?

20 A. A.D.A. Weisberg, myself and the defendant, David  
21 Delgado, and a videotaped technician.

22 MR. ROSENFELD: Your Honor, I ask that this CD be  
23 deemed marked People's Exhibit 15 for identification.

24 THE COURT: So deemed.

25 MR. CANTOR: Let it come in evidence, your Honor.

B-ljb

People - DETECTIVE KENNETH BANKER - continued direct 1479

1 MR. ROSENFELD: Obviously, your Honor, at this  
2 time the People would move People's Exhibit 15 into  
3 evidence on consent.

4 THE COURT: There being no objection it is so  
5 moved and you will mark at the appropriate time.

6 (The videotaped statement of defendant was  
7 received and deemed marked in evidence as People's Exhibit  
8 15.)

9 Q. Detective, have you had an opportunity prior to coming  
10 here to view People's Exhibit 16?

11 MR. CANTOR: Fifteen.

12 A. Yes, I have.

13 Q. Fifteen, I'm sorry, I misspoke, 15?

14 A. Yes, sir, I have.

15 Q. And does that -- withdrawn.

16 MR. CANTOR: Let him see it.

17 MR. ROSENFELD: I am waiting to setup. Your  
18 Honor, at this time the People would like to play People's  
19 Exhibit 15 for the jury.

20 MR. CANTOR: No objection whatsoever.

21 THE COURT: You may.

22 (Whereupon the videotape is played at this time.)

23 MR. ROSENFELD: May the record indicate, your  
24 Honor, that People's Exhibit 15 has been played in its  
25 entirety for the jury?

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct

1480

1 THE COURT: So will indicate.

2 Q. Detective, once the videotape statement was taken what  
3 was done with the defendant?

4 A. At approximately 1600 hours I called the Dempsey  
5 family and I stated I will need them --

6 MR. CANTOR: I will object to what he stated.

7 THE COURT: Overruled.

8 Q. Go ahead.

9 A. Actually that was right before that I called them.  
10 After that was done the DA finished up what they were doing  
11 there and then I took the defendant to Simpson Street, 1086  
12 Simpson Street.

13 Q. What was the purpose of going to 1086 Simpson Street  
14 with the defense?

15 A. So line up procedures could be done.

16 Q. Could you please explain, to the ladies and gentlemen  
17 of the jury, in generic terms what a line-up procedure is and  
18 how you go about setting one up?

19 A. A line-up procedure is when you have a suspect or a  
20 defendant of a crime and you are going to have an identification  
21 process completed by witnesses or a victim of a crime. It's a  
22 room maybe 20 feet long with a wall like (indicating), similar  
23 to the one in front of you with chairs behind it, you only see  
24 the upper torso area of the people. There is numbers one  
25 through six behind each chair. What happens is you bring the

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct

1481

1 witness or victim into a separate room, which is another one-way  
2 mirror that they can see out of, but the people on the other  
3 side of the glass can only see a reflection of themselves. At  
4 that point once they're ready the detective lets the inside  
5 detective know they're ready. Once he responds that he is ready  
6 blinds are opened up. The witness or victim views the people  
7 seated in the chairs one through six or one through five,  
8 depending on how much you did, and then you ask them if they  
9 recognize anyone in the line up. If so, where do you recognize  
10 them from and what did they do and then after those questions  
11 are done you leave, the blinds are shut, you leave the room with  
12 them. They sign a little form on where they know the person or  
13 don't know the person from. Sometimes they don't know them.

14 Q. And where is this conducted by the New York City  
15 Police Department?

16 A. The one I did was at 1086 Simpson Street, which is  
17 Detective Borough Headquarters for the Bronx.

18 Q. And is that the normal place where the police  
19 department conducts its line up?

20 A. Bronx County, yes.

21 Q. And how is that area setup in regards to where a  
22 suspect is kept, fillers for the line ups are kept and witness  
23 is kept?

24 MR. CANTOR: Three questions and one objection.

25 MR. ROSENFELD: It's all one.

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct

1482

1 MR. CANTOR: Judge, I object.

2 THE COURT: The objection is overruled.

3 MR. CANTOR: Yeah, but why do we have to have his  
4 argument, why?

5 THE COURT: Right, no argument by either side,  
6 just objection.

7 MR. CANTOR: I am right, wow.

8 A. When you walk into 1086 Simpson Street you pass a  
9 desk, go to an elevator, take the elevator to the third floor.  
10 Once you get to the third floor you make a left-hand turn.  
11 Right after the left-hand turn, about ten feet down the hall to  
12 the right there is a solid wooden door, through that door when  
13 you first go through it are two cell areas where the defendants  
14 are kept. If you -- instead of going to the cell if you make a  
15 sharp left there is a solid wooden door, that little room is  
16 like an eight by four room where the witnesses stand to view it  
17 and on the other side of the glass of that is the room probably  
18 20 feet by 10 feet long where the witnesses and suspects sit to  
19 be viewed.

20 Q. Where the witnesses sit?

21 A. I'm sorry, where the fillers and the suspects sit in  
22 that room. Now, when you get out the elevator you make the left  
23 instead of going to the right to that door. If you continue  
24 down that hallway down the left to the end of the hall where it  
25 ends you make a right. You go down about five feet on the

B-1jb



People - DETECTIVE KENNETH BANKER - continued direct

1483

1 left-hand side is another room where witnesses sit. In that  
2 room it has blinds that are closed. Because of all of the turns  
3 and walls there is no way possible to see --

4 MR. CANTOR: I am going to object.

5 A. -- where a defendant is.

6 MR. CANTOR: There is no way possible to see.

7 THE COURT: All right. You may stop there, you  
8 have answered. You may continue.

9 MR. CANTOR: May that part be stricken, the last  
10 part?

11 THE COURT: For the moment.

12 A. They're seated behind a series of turns so that there  
13 is no direct viewing between --

14 MR. CANTOR: Judge, I objected, you for the  
15 moment sustained it.

16 THE COURT: Yes, yes, you are correct.

17 MR. CANTOR: Will you strike that?

18 THE COURT: It's sustained.

19 MR. CANTOR: And will you strike it?

20 THE COURT: And re-posture your question.

21 MR. CANTOR: Will you strike that?

22 THE COURT: For a moment.

23 Q. Detective, where the witnesses are kept after these  
24 turns that you just described to the area where the suspects,  
25 defendants or fillers are kept can that area be seen by

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct

1484

1 witnesses?

2 A. No.

3 Q. Why is that?

4 A. There is a series of turns and walls and solid objects  
5 that are blocking that possibility.

6 Q. You use the word filler. Explain what the word filler  
7 means.

8 A. Once you have your suspect, just by looking at that  
9 person you know what they look like so, what you want to try to  
10 do is get a group of people similar in appearance to your  
11 suspect so that a line-up procedure can be done.

12 Q. So, Detective, on December 26, 2009, at some point in  
13 the afternoon were attempts made to conduct a line up or setup  
14 or prepare for a line up?

15 A. Yes.

16 Q. Okay. What were some of the things you did to prepare  
17 for the line up that afternoon?

18 A. At 6:10 myself and Detective McSloy took the defendant  
19 from the 43rd, brought him to Detective Bureau Headquarters,  
20 that was the first thing we did. At that point I asked  
21 Detective Walker to pick up the fillers and then I observed him  
22 come back to that location with the fillers. That was like 6:40  
23 that occurred.

24 Q. And where were the fillers and the defendant kept?

25 A. The defendant was brought up first before anyone when

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct 1485

1 we got there. Once he was safeguarded in the cell area,  
2 Detective Walker, I observed him downstairs with the fillers and  
3 let him know that it was okay to come up being that the  
4 defendant was in his cell.

5 Q. Were there any witnesses there to the crime at that  
6 time?

7 A. The witnesses were already in the viewing air -- the  
8 waiting area. They were inside that other room with the blinds  
9 the witnesses.

10 Q. The witnesses were in which room?

11 A. The waiting area. After they were there Detective  
12 McSloy went to get the fillers. He responded with the fillers,  
13 again I saw him when he was outside, let him know it was okay.  
14 He brought the fillers up to put them into the room. Now once  
15 they're inside that room that was when we gave the defendant the  
16 opportunity to chose a seat, being seats one through five,  
17 because we had four fillers. So we used the first five seats  
18 and at that point he chose to sit in position number three.

19 Q. And did the defendant at any point have any problem  
20 following your instructions?

21 A. No, he was very cooperative.

22 Q. Up until that point had the defendant ever asked for  
23 an attorney?

24 A. No, he did not.

25 Q. Up until that point had the defendant ever requested

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct

1486

1 any medical attention?

2 A. Never.

3 Q. Up until that point had it appeared to you the  
4 defendant was in need of any medical attention?

5 A. No.

6 Q. Now, once the defendant had sat in seat number three  
7 was anything done in respect -- up to the fillers and the  
8 defendant?

9 A. Yes, I filled the fillers in their positions that were  
10 one, two, four and five so that all five seats were  
11 consecutively filled and the numbers were behind them. At that  
12 point then preserved that line up by taking photographs of it.

13 Q. All right. I show --

14 MR. ROSENFELD: I asked that this be marked  
15 People's Exhibit 16 for identification.

16 THE COURT: So deemed People's 16 for  
17 identification.

18 MR. ROSENFELD: I ask that People's Exhibit 16 be  
19 shown to the witness.

20 (Whereupon the exhibit is shown to the witness.)

21 Q. Detective, have you had an opportunity to look at what  
22 has been deemed marked People's Exhibit 16 for identification?

23 A. Yes.

24 Q. And you recognize what People's Exhibit 16 is?

25 A. Yes.

B-1jb

People - DETECTIVE KENNETH BANKER - continued direct 1487

1 Q. And what is that?

2 A. It's a photograph that I took of the line up  
3 preserving what it looked like that day.

4 MR. CANTOR: Judge, he really ought not display  
5 it until it's in evidence. He's so anxious to display it.

6 MR. ROSENFELD: Objection, your Honor.

7 THE COURT: No need to editorialize.

8 MR. CANTOR: This is the first time that he has  
9 banged on the table.

10 THE COURT: Yes, please.

11 MR. CANTOR: Third time. People don't have the  
12 record they go want --

13 MR. ROSENFELD: Objection, your Honor, this is  
14 outrageous what he just said to the jury.

15 THE COURT: Yes.

16 MR. ROSENFELD: It's on the record, your Honor.  
17 I want the jury instructed this is unprofessional.

18 MR. CANTOR: He is yelling. He is screaming. He  
19 is pointing his finger at me.

20 MR. ROSENFELD: Improper.

21 THE COURT: The jury will disregard.

22 MR. CANTOR: And he is yelling.

23 THE COURT: Please continue, Mr. District  
24 Attorney.

25 MR. ROSENFELD: Your Honor, I can't continue if

B-ljb

People - DETECTIVE KENNETH BANKER - continued direct 1488  
1 he is going to interrupt and say things to the jury that  
2 are totally outside the scope of this trial and are  
3 unprofessional.

4 MR. CANTOR: I am silent.

5 THE COURT: He's cautioned against it.

6 MR. ROSENFELD: Okay.

7 MR. CANTOR: I am quiet and he is carrying on  
8 like a little child who can't get his thought.

9 MR. ROSENFELD: Your Honor, may we approach?

10 THE COURT: You know I really can't believe this.  
11 This is unbelievable, Mr. Cantor --

12 MR. CANTOR: No, Judge, he is carrying --

13 THE COURT: -- how you are going on. Now listen  
14 to me, please.

15 MR. CANTOR: I am silent.

16 THE COURT: Just sit there quietly, let us  
17 continue with this gentleman. You will have your  
18 opportunity on cross examination --

19 MR. CANTOR: Thank you.

20 THE COURT: -- to vint anything you wish.

21 MR. CANTOR: Thank you.

22 THE COURT: To find out anything you wish.

23 Mr. D.A.

24 MR. CANTOR: Will you tell the D.A. to stop  
25 banging on the table, Judge, stop raising his voice?

People - DETECTIVE KENNETH BANKER - continued direct 1489

1 THE COURT: I did not really perceive that.

2 MR. CANTOR: Really?

3 THE COURT: Go ahead, Mr. District Attorney.

4 MR. CANTOR: Can you tell the witness not to  
5 display --

6 MR. ROSENFELD: Your Honor, he is continuing with  
7 the colloquy objection.

8 MR. CANTOR: Can you do that at least?

9 MR. ROSENFELD: Objection.

10 THE COURT: The witness did not display it to the  
11 jury, he waved it.

12 MR. CANTOR: Did not, did not display it?

13 THE COURT: No.

14 MR. CANTOR: Okay. We will let the jury  
15 determine that.

16 THE COURT: You may continue.

17 BY MR. ROSENFELD:

18 Q. Detective, is that item, People's Exhibit 16, a fair  
19 and accurate photograph of the way the line up appeared back on  
20 December 26, 2009?

21 A. Yes, it is.

22 MR. ROSENFELD: Your Honor, at this time we would  
23 move People's Exhibit 16 into evidence.

24 THE COURT: Please share it.

25 MR. CANTOR: Can I have that voir dire?

People - DETECTIVE KENNETH BANKER - voir dire

1490

1 THE COURT: You may.

2 VOIR DIRE EXAMINATION

3 BY MR. CANTOR:

4 Q. Did all of the fillers who came to be seated in that  
5 room did they all come to the precinct with black caps?

6 A. No, they did not.

7 Q. My client, was he brought to borough headquarters with  
8 a black caps on?

9 A. No, he was not.

10 Q. But the line up that you conducted had five males in  
11 it, correct?

12 A. Correct.

13 Q. And each one was wearing a black cap?

14 A. Correct.

15 Q. Did you put them on?

16 A. I handed them to them, correct.

17 Q. And they put it on?

18 A. Correct.

19 Q. Of the five people in the line up how many people were  
20 wearing a white shirt?

21 A. One.

22 MR. ROSENFELD: Your Honor, objection. Out of  
23 the scope of voir dire.

24 THE COURT: The objection is sustained.

25 MR. CANTOR: Let it come in, Judge, I have no

B-1jb



People - DETECTIVE KENNETH BANKER - direct

1491

1 objection.

2 THE COURT: There being no objection to what  
3 previously was marked People's number 16 for purposes of  
4 identification is now deemed as having been proffered into  
5 and received as People's 16 in evidence. You will mark it  
6 at the close of the session, sir.

7 (The lineup photograph having been previously  
8 marked for identification is hereby deemed marked in  
9 evidence as People's Exhibit 16.)

10 MR. ROSENFELD: Your Honor, may the record  
11 indicate that I am publishing People's Exhibit 16?

12 THE COURT: So indicated.

13 (Whereupon People's Exhibit 16 is published to  
14 the jury at this time.)

15 BY MR. ROSENFELD:

16 Q. Detective, looking at People's Exhibit 16 when the  
17 individuals was seated in their seats, the fillers plus the  
18 defendant, did you do anything regarding their appearance?

19 A. Yes.

20 Q. What, if anything, was done and why?

21 A. I handed them all baseball caps and asked them to  
22 cover all their hair. This way if someone has a pony tail or  
23 long hair or shaved head it won't be an issue. It will be, you  
24 know, its a fairer way of conducting a line up.

25 MR. CANTOR: Object to that --

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1492

1 A. Because the hair is not issued --

2 MR. CANTOR: -- fairer way. I ask that that be  
3 stricken.

4 THE COURT: Yes, the jury will determine the  
5 fairness, it's stricken.

6 Q. Your purpose of -- in asking them to put caps on was  
7 what?

8 A. To hide hair color and haircuts style.

9 Q. Was the haircut style and color among the fillers and  
10 the defendant?

11 A. Yes.

12 Q. Other than that did you do anything else to change  
13 their appearance?

14 A. No.

15 Q. All right. Detective, did there come a time before  
16 this had you during the day of December 26, 2009, contacted  
17 potential witnesses or people who had been at the incident that  
18 occurred on December 26th of 2009?

19 A. Yes.

20 MR. CANTOR: Judge, can we --

21 Q. And the witnesses --

22 MR. CANTOR: Judge, can we approach with the  
23 reporter because we are coming perilously close --

24 MR. ROSENFELD: Objection to the colloquy, your  
25 Honor.

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1493

1 THE COURT: You may approach the bench first.  
2 Detective, be good enough to stand down.

3 THE WITNESS: Yes.

4 (The witness exits the witness stand and there is  
5 an off-the-record discussion.)

6 THE COURT: Ms. Reporter.

7 (Whereupon the following discussion is conducted  
8 at sidebar.)

9 THE SERGEANT: Counsel, you are waiving your  
10 client's appearance?

11 MR. CANTOR: Yes. We've already had testimony  
12 that a line up has been set up. A picture of the line up,  
13 including my client in white shirt, and the only one in a  
14 white shirt has been introduced into evidence and published  
15 to the jury. The DA has now elicited that police officers  
16 went out, left Borough Headquarters for purposes of  
17 bringing witnesses to view the line up. We already have  
18 circumstantially reached the point of violation of *People*  
19 *v. Trowbridge*. It doesn't take too much for the jury to  
20 put two and two together that witnesses came to the  
21 precinct. They've seen what the line up looked like. They  
22 know that my client was under arrest and it's indelectable  
23 inference that can be drawn and would be drawn by the  
24 jurors if the witnesses are brought and made  
25 identifications of my client. Now, of course, the People

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1494

1 can't introduce the witnesses themselves and they have  
2 those witnesses testified that they made a line up  
3 identification of number three, but what the People can't  
4 do are either circumstantially or by direct evidence is  
5 induce via a third party, such as this detective, that  
6 these witnesses made identification of my client. That is  
7 the steadfast rule of People v. Trowbridge,  
8 T-R-O-W-B-R-I-D-G-E. He's already crossed, the prosecutor  
9 has already circumstantially crossed that line by setting  
10 in motion the line up the way it looks showing the picture  
11 to the jury and now, he has witnesses that are on their way  
12 to view a line up at Bronx Borough Headquarters. I am  
13 moving for a mistrial. Firstly, this is considered a most  
14 egregious error, it violates the Court --

15 MR. ROSENFELD: Please keep your voice down, sir.

16 MR. CANTOR: My voice is not loud.

17 MR. ROSENFELD: Judge, may we go in chambers?

18 MR. CANTOR: I am objecting.

19 THE COURT: That's why I made --

20 MR. CANTOR: I --

21 THE COURT: Just continue your record. Face the  
22 reporter.

23 (Whereupon at this time the defense counsel leans  
24 over the court reporter's machine and begins speaking in  
25 close proximity to her face.)

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1495

1 THE COURT REPORTER: Counsel, get out of my face.

2 MR. CANTOR: Fine. I am being frustrated. You  
3 tell me to face the reporter. You --

4 THE COURT: You did --

5 MR. CANTOR: And she says get out of my face.

6 THE COURT: Only because you sort of leaned on  
7 top.

8 MR. CANTOR: I leaned because I wanted her to  
9 hear. I have a right to have a record. This reporter is  
10 frustrated. That right --

11 THE COURT: This reporter is not doing that, she  
12 is asking you to give her some space.

13 MR. CANTOR: You tell me where to look, where to  
14 stand.

15 THE COURT: Right where you're standing.

16 MR. CANTOR: Okay.

17 THE COURT: Please continue your line of  
18 reasoning.

19 MR. CANTOR: Okay. I want my last comments read  
20 by the reporter. You interrupted me by saying get out of  
21 my face.

22 MR. ROSENFELD: Your Honor, may I suggest we go  
23 into chambers, this is not good.

24 THE COURT: You may read back that last sentence.

25 MR. CANTOR: Thank you.

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1496

1 (Whereupon the last sentence was read back by the  
2 reporter as follows: I am moving for a mistrial. Firstly,  
3 this is considered a most egregious error, it violates the  
4 Court --)

5 MR. CANTOR: It violates the Court of Appeals  
6 decision in *People v. Trowbridge*, T-R-O-W-B-R-I-D-G-E, it  
7 is reversal error per se. I am moving for a mistrial.  
8 Mr. District Attorney has circumstantially set the stage  
9 for these jurors to draw an indelectable inference that  
10 witnesses on who were produced at Borough headquarters made  
11 identifications of my client. Now, that would be all right  
12 if it came from the witness themselves, but it cannot come  
13 from the third party such as Detective Banker and so thus I  
14 move for a mistrial.

15 THE COURT: Mr. D.A.

16 MR. CANTOR: And, Judge, repeatedly I have kept  
17 my voice at a level that no one outside perhaps only two  
18 feet from where we are and we are as you are face on the  
19 podium on the right steps, there are three steps that lead  
20 out to the ground. This district attorney in order to  
21 discombobulate, confuse me, has continuously interrupted me  
22 be claiming my voice is too loud. My voice is not too  
23 loud. My voice has always been low enough so that the only  
24 people can hear beyond two or three feet beyond this circle  
25 can hear and these constant interruptions and scurrilous

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1497

1 statements that have no foundation are only meant to  
2 obstruct and obfuscate my viability to defend my client  
3 vigorously and zealously. I am sure the Court wants that,  
4 vigorously representation of a man accused of murder in the  
5 second degree.

6 THE COURT: Very definitely.

7 Mr. D.A. would you like to say anything?

8 MR. ROSENFELD: First of all, your Honor,  
9 regarding the last part of Mr. Cantor's statements he has  
10 at times raised his voice louder than normal voice and  
11 that's what I tried to point out so that he would reduce  
12 his tone of voice so the jury cannot hear what he is  
13 saying. He is facing the direction of the jury as he is  
14 talking and sometimes he does raise his voice as he is  
15 pointing out.

16 second of all, that the argument that Mr. Cantor  
17 last presented the Court are totally irrelevant. The  
18 People have not in any manner asked this witness to state  
19 what some other witness told him about an identification  
20 process. We have only been talking about the setting up of  
21 the line up. The arrangements were made and the following  
22 statements were being where the witnesses were already  
23 testified, present, the time they viewed the line up not  
24 whether they made an identification or not. That was  
25 *Trowbridge* and I will not be asking merely the

B-1jb

People - DETECTIVE KENNETH BANKER - direct

1498

1 circumstances surrounding it as has been testified to.

2 MR. CANTOR: He is --

3 THE COURT: And he is not finished and the motion  
4 to -- for mistrial?

5 MR. ROSENFELD: There is no circumstantial  
6 evidence at this point that would support any type of  
7 motion for a mistrial, it's not even close.

8 MR. CANTOR: This is a fair evidentiary --

9 MR. ROSENFELD: I --

10 THE COURT: You made your record.

11 MR. CANTOR: Okay. I am just going to say in one  
12 sentence there is a sufficient evidentiary predicate  
13 established through this witness for the jury to conclude  
14 by way of an inference drawn that this witness is  
15 circumstantially testifying in a manner that would allow  
16 the jurors to draw the inference through the Detective  
17 Banker's testimony that I think identifications by  
18 witnesses of my client in the line up had been made, this  
19 violates *Trowbridge*.

20 THE COURT: All right. The motion for a mistrial  
21 the Court does not believe we have even come near the  
22 threshold of such a drastic action and denies that. Your  
23 exception is noted.

24 The People are cautioned with regard to  
25 *Trowbridge* rule, which they've expressed themselves on and

B-1jb



People - DETECTIVE KENNETH BANKER - direct

1499

1 once again, the Court pleads both counsel no outbursts. No  
2 editorializing and so forth.

3 Let us continue.

4 MR. ROSENFELD: Just for saying, your Honor, I am  
5 just going to reiterate, when we make an objection do you  
6 want us to say one or two words or just --

7 THE COURT: One or two words, but no argument.

8 MR. ROSENFELD: I will abide by that.

9 THE COURT: Thank you.

10 MR. CANTOR: It will be a first time if he did.

11 (Continues next page.)  
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B-1jb

JO-C

DET. BANKER-PEOPLE-DIRECT

1 (Whereupon, the following takes place on the  
2 record, in open court, in the hearing and presence of the  
3 jury.)

4 THE COURT: Detective, back on the stand, all  
5 right.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. District Attorney, let us continue  
8 and complete with the gentleman.

9 CONT'D DIRECT EXAMINATION BY

10 MR. ROSENFELD:

11 Q. Now, did there come a time later that evening that  
12 witnesses viewed the lineup?

13 A. Yes.

14 Q. And did there come a time at approximately 7:21 p.m.  
15 that a witness, Alberto Vasquez, viewed the lineup?

16 MR. CANTOR: Objection.

17 A. No.

18 MR. CANTOR: He is leading. Why can't he say what  
19 happened at 7:21. It's leading.

20 THE COURT: I think it's fine. It is okay.

21 MR. CANTOR: It is okay? It is okay?

22 THE COURT: Let it go. Yes.

23 MR. CANTOR: Can you note my exception, please.

24 THE COURT: Yeah, sure.

25 A. Yes.

JO-C

DET. BANKER-PEOPLE-DIRECT

1 Q. And who is present when Alberto Vasquez viewed the  
2 lineup?

3 A. I was.

4 Q. And you described before how a lineup was conducted.  
5 What room was Alberto Vasquez in?

6 A. The viewer's room.

7 Q. And did there come a time -- I'm sorry. Where was  
8 Alberto Vasquez prior to viewing the lineup?

9 MR. CANTOR: Objection. How does he know? He was  
10 in the lineup room.

11 Q. Prior to viewing the lineup --

12 MR. CANTOR: Yes.

13 Q. -- where was Alberto Vasquez?

14 THE COURT: If he knows.

15 MR. CANTOR: Objection.

16 THE COURT: If he knows.

17 MR. CANTOR: Of course it's if he knows.

18 A. He was in the waiting room, viewer's waiting room.

19 MR. CANTOR: I am going to move to strike, Judge,  
20 because he is in the lineup area. How does he know that?

21 THE COURT: Denied.

22 MR. CANTOR: Denied? Thank you. Exception noted.

23 Q. How does the process work -- withdrawn.

24 When Alberto Vasquez was brought into this viewing room  
25 was that window that you were describing before covered, opened

JO-C

DET. BANKER-PEOPLE-DIRECT

1 in any way or how does it appear?

2 A. The closed blind.

3 Q. What happened once you brought him into the room  
4 regarding the blinds?

5 MR. CANTOR: Objection.

6 THE COURT: Overruled.

7 MR. CANTOR: Trowbridge.

8 THE COURT: All right. Be cautious.

9 MR. ROSENFELD: Okay.

10 THE COURT: But overruled.

11 Q. What happened regarding the lineup?

12 A. Once we were in that room and ready the blinds were  
13 opened.

14 Q. And after Alberto Vasquez -- withdrawn.

15 Did you have a conversation with Alberto Vasquez at any  
16 time?

17 A. Yes.

18 Q. And after Alberto Vasquez viewed the lineup what if  
19 anything did you do with them?

20 A. I brought him out and down the hall to the DNA room.

21 Q. What does that mean?

22 A. It's just labelled the DNA room. It's a separate area  
23 away from where the future viewers are anyway.

24 MR. CANTOR: Objection to this witness --

25 THE COURT: Okay. All right. He put him in a

JC-C

DET. BANKER-PEOPLE-DIRECT

1 separate area; is that correct?

2 THE WITNESS: Correct, yes, sir.

3 THE COURT: Let's move on.

4 MR. CANTOR: And can anyway be stricken?

5 THE COURT: There is nothing to really be  
6 stricken. All right, let's move on.

7 Q. Now, after Alberto Vasquez was put in that DNA room  
8 area did there come a time at around 7:23 --

9 MR. CANTOR: Judge, I am going to object to the  
10 leading. I am going to object to the leading.

11 THE COURT: Because of the multiplicity of viewers  
12 I find this an efficient way to move on, and I find it not  
13 prejudicial in the least. Therefore, I am permitting it.  
14 Your exception is noted.

15 Please continue, Mr. District Attorney.

16 Q. You may answer.

17 A. Yes.

18 Q. And did there -- did you bring Ms. Melissa Dempsey into  
19 the same lineup room where you previously brought Alberto  
20 Vasquez?

21 A. I did.

22 Q. And who was present in the interviewing room that day?

23 A. I was.

24 MR. CANTOR: Would you note my continuing  
25 objection to the entire line, and would you instruct the

JO-C

DET. BANKER-PEOPLE-DIRECT

1 witness --

2 THE COURT: You don't know --

3 MR. CANTOR: He answered notwithstanding my  
4 objection --

5 MR. ROSENFELD: Objection to the colloquy.

6 MR. CANTOR: -- before you ruled.

7 THE COURT: You are correct. You are correct.

8 MR. CANTOR: Until you rule.

9 THE COURT: You know the rules, Detective. When  
10 the objection is made, wait. Just wait a moment.

11 THE WITNESS: Yes.

12 THE COURT: Continue, Mr. District Attorney.

13 MR. ROSENFELD: I am not sure.

14 Q. Was Melissa Dempsey brought to the same viewing area  
15 where Alberto Vasquez had viewed the lineup?

16 A. Yes.

17 Q. And was the process the same in terms of viewing the  
18 lineup as you did with Alberto Vasquez as to Ms. Dempsey?

19 A. Yes.

20 Q. And once Ms. Dempsey had finished viewing the lineup  
21 what if anything did you do with her?

22 A. I brought her to the DNA room.

23 Q. That's where Mr. Vasquez was?

24 A. Yes, correct.

25 Q. And then did there come a time that you brought -- one

JO-C

DET. BANKER-PEOPLE-DIRECT

1 second -- a woman by the name of Maria Rodriguez to view a  
2 lineup at about 7:33 p.m.?

3 A. Yes.

4 Q. And, again, was this the same procedure that you  
5 conducted with Melissa Dempsey and Alberto Vasquez?

6 A. Yes.

7 Q. The same room?

8 A. Yes.

9 Q. And Maria Rodriguez, what did you do with her after she  
10 viewed the lineup? What you did with her?

11 A. Brought her to the DNA room.

12 Q. Thank you. Now, during the viewing of the lineup by  
13 all three of these witnesses was the -- were the fillers and  
14 defendant seated as they are in People's exhibit 16?

15 A. Yes.

16 Q. Did you at any time communicate to any of the witnesses  
17 anything about the lineup as to where anyone was seated?

18 A. No.

19 Q. All right. Once the lineups were concluded did there  
20 come a time that you took defendant David Delgado for processing  
21 your arrest?

22 A. Yes.

23 Q. And did there come a time that you got what's known as  
24 pedigree or received pedigree information from David Delgado?

25 A. Yes.

JO-C

DET. BANKER-PEOPLE-DIRECT

1 Q. And did you receive from David Delgado his date of  
2 birth?

3 A. I did.

4 Q. What is his date of birth?

5 A. 7/18/75.

6 Q. And you received from David Delgado any information  
7 about his height and his weight?

8 A. Yes.

9 Q. And what was that?

10 A. Five foot six, approximately 200 pounds.

11 MR. ROSENFELD: Your Honor, may I have a couple of  
12 minutes. One minute even just to let me review, and I will  
13 be finished.

14 THE COURT: Take your time.

15 (Whereupon, there was a brief pause in the  
16 record.)

17 Q. Detective, prior to coming into court have you had an  
18 opportunity to meet with me and my office and discuss this case?

19 A. Yes.

20 Q. Have you had an opportunity prior to coming to court to  
21 review the photographs that or that are on this case and your  
22 reports and anything else in regards to this case?

23 A. Yes.

24 Q. Approximately how many times in the course of two and a  
25 half years did you have an opportunity to review this case with



JC-C

DET. BANKER-PEOPLE-CROSS

1 me?

2 A. About 10 or 11 times.

3 MR. ROSENFELD: Thank you. I have no further  
4 questions. Thank you, Detective.

5 THE WITNESS: You are welcome.

6 THE COURT: Thank you, sir.

7 Mr. Defense counsel.

8 CROSS-EXAMINATION BY

9 MR. CANTOR:

10 (Whereupon, the exhibit is displayed on the ELMO.)

11 Q. After Maria Rodriguez viewed the lineup at 7:35 did you  
12 bring any other civilian into the viewing room?

13 MR. ROSENFELD: Objection, your Honor.

14 THE COURT: Overruled.

15 A. Yes.

16 Q. Who?

17 A. I would have to refer to my DD-5.

18 Q. Yeah, why don't you do that.

19 (Whereupon, the witness perused documents.)

20 THE COURT: Just tell us what it is that you are  
21 looking at and the date thereof.

22 THE WITNESS: Yes, sir. I am referring to DD-5  
23 No. 45.

24 Q. Just the name of the person --

25 THE COURT: Dated? One second.

JO-C

DET. BANKER-PEOPLE-CROSS

1 THE WITNESS: Sorry. I am sorry. December 26th  
2 is when this occurred.

3 THE COURT: All right.

4 Q. No. The Judge asked you the date of the document, sir.

5 A. The date of the document?

6 Q. Yes.

7 A. Was on the 27th.

8 Q. Okay. So who was the civilian that came in after Maria  
9 Rodriguez, just the name?

10 A. Maria Rodriguez? Daniel Solis, S-o-l-i-s.

11 Q. Now, after Mr. Solis was there, another civilian who  
12 was brought in to view the lineup?

13 A. Yes, sir.

14 Q. Who, by name?

15 A. Wilfredo Cruz, C-r-u-z.

16 Q. I got it. I got it. After Mr. Cruz was there, another  
17 civilian brought in?

18 A. Yes.

19 Q. Who?

20 A. Arileida Jimenez.

21 Q. Spell the first name.

22 A. A-r-i-l-e-i-d-a.

23 Q. And after Ms. Jimenez was there, another civilian  
24 brought in?

25 A. Not for the lineup, no.

JO-C

DET. BANKER-PEOPLE-CROSS

1 Q. Was a picture of this lineup, which has been marked  
2 People's 16 in evidence -- did you ever -- after conducting the  
3 actual lineup with these six people, did you ever show a picture  
4 of that lineup to any prospective witnesses?

5 A. Never.

6 Q. Now, you said in order to cover the different  
7 hairstyles of defendant and the four fillers you put baseball  
8 caps on all of them?

9 A. Wool caps.

10 Q. Now, did you say on direct examination when questioned  
11 by Mr. Rosenfeld that you put baseball caps on all of them, yes  
12 or no?

13 A. Oh, I may of. I don't know.

14 Q. Sir, the question is, do you recall?

15 A. I do not.

16 Q. You don't recall -- I want to complete my question.  
17 You don't recall your testimony of about 10, 12 minutes ago that  
18 in order to conceal the different hairstyles you put baseball  
19 caps on all four fillers and my client, you remember making that  
20 statement?

21 A. I don't remember if it's baseball caps. If I --

22 Q. Sir, my question is, do you remember making that  
23 testimony, yes or no?

24 MR. ROSENFELD: Objection: Asked and answered.

25 THE COURT: I will allow him to answer the

JO-C

DET. BANKER-PEOPLE-CROSS

1 question.

2 Q. Yes or no?

3 A. The --

4 Q. The answer is simple --

5 MR. ROSENFELD: Your Honor --

6 Q. -- make --

7 MR. ROSENFELD: Judge, an objection.

8 Q. -- the same --

9 THE COURT: No, I allow it.

10 Q. It's very simple, do you remember telling Mr. Rosenfeld  
11 that you put baseball caps on them, yes or no?

12 A. No.

13 Q. Thank you. Who is the only one wearing a white  
14 t-shirt?

15 A. The defendant.

16 Q. Let's go back to Brooklyn. When you went up the stairs  
17 you had your shield around your neck displayed, correct?

18 A. Correct.

19 Q. And did you not identify yourself to Mr. Delgado?

20 A. I did.

21 Q. And was that at the doorway of Mr. Delgado's room or  
22 apartment?

23 A. Yes.

24 Q. And then you took him into the apartment and helped him  
25 put on footwear, correct?

JO-C

DET. BANKER-PEOPLE-CROSS

1 A. Yes.

2 Q. Helped him put on a jacket?

3 A. Yes.

4 Q. Or actually draped the jacket over his back, correct?

5 A. Yes, that's correct.

6 Q. Which you had handcuffed him behind the back, correct?

7 A. Yes.

8 Q. And so you did that so that the handcuff couldn't be  
9 seen by other people?

10 A. Correct.

11 Q. Okay. And you are in the car now with Mr. Delgado and  
12 you are alongside of him in the backseat, and without your  
13 asking or any other police member asking any question  
14 Mr. Delgado within a minute of getting into the car made the  
15 statement which you later wrote down in your memo book, correct?

16 A. Yes.

17 Q. And then as the car was traveling, about 5, 10 minutes  
18 later, again without you asking or any other police officers  
19 asking questions he said that was the time that he really fucked  
20 up?

21 A. Not exact words, no.

22 Q. This was the time that he really fucked up, words to  
23 that effect?

24 A. To that effect, yes.

25 Q. Okay. But you didn't write that down?

JO-C

**DET. BANKER-PEOPLE-CROSS**

1 A. No, I did not.

2 Q. But you wrote the first statement down?

3 A. Correct.

4 Q. And you still had your memo book in your possession,  
5 correct?

6 A. Yes..

7 Q. You still had your writing implement in your  
8 possession, correct?

9 A. Correct.

10 Q. Now, you retired from the New York City police force on  
11 December 31, 2011, right?

12 A. Yes.

13 Q. Since that time until the present are you working?

14 A. No.

15 Q. You have been supporting yourself on disability  
16 payments provided to you by the City of New York; is that  
17 correct?

18 A. Yes.

19 Q. And is that full disability or three quarters or one  
20 half?

21 MR. ROSENFELD: Your Honor, is this relevant?

22 Q. Don't mumble and look at Mr. Rosenfeld.

23 A. What does that have to do with anything?

24 MR. ROSENFELD: Objection, your Honor.

25 THE COURT: One second. One second, please. You

JO-C

DET. BANKER-PEOPLE-CROSS

1 may answer the question.

2 A. It's -- can you --

3 Q. Please look at me, sir, and the jury --

4 MR. ROSENFELD: Objection to this colloquy from  
5 defense counsel.

6 Q. -- and answer the question.

7 THE COURT: Please, please.

8 MR. ROSENFELD: Objection to the --

9 MR. CANTOR: You already overruled.

10 THE COURT: One second, Mr. Cantor. No need to  
11 badger the witness.

12 MR. CANTOR: He looks to you and mumbles  
13 something.

14 THE COURT: He is thinking perhaps.

15 MR. CANTOR: He shouldn't be mumbling to the  
16 Court.

17 MR. ROSENFELD: Objection to this colloquy.

18 THE COURT: Yes.

19 Q. All right. Answer the question. It's been overruled.

20 A. All right. Can you repeat it.

21 Q. The court reporter will be ever so happy to do so.

22 (Whereupon, the court reporter read back the  
23 above-requested testimony.)

24 A. Okay. It's three quarters disability.

25 Q. And in what county do you reside?

JO-C

DET. BANKER-PEOPLE-CROSS

1 MR. ROSENFELD: Objection.

2 THE COURT: Sustained.

3 MR. CANTOR: Every prosecution witness gets to say  
4 that.

5 THE COURT: Sustained.

6 Q. Do you reside outside of New York City?

7 MR. ROSENFELD: Objection to relevance.

8 THE COURT: Sustained.

9 Q. Wherever you reside you support yourself by three  
10 quarters disability that you receive from New York City as a  
11 result of the injury you sustained while working as a New York  
12 City detective, correct?

13 A. Partially. My wife work.

14 Q. I see. But you get how much money per month?

15 MR. ROSENFELD: Objection, your Honor.

16 THE COURT: Sustained.

17 Q. You get a substantial amount of money from New York  
18 City, don't you?

19 MR. ROSENFELD: Objection.

20 THE COURT: Sustained.

21 MR. CANTOR: Judge, it goes to bias or interest.

22 THE COURT: I understand, sir. It's sustained.

23 Q. You work partially? You have a part-time job?

24 A. No.

25 Q. You don't?



JO-C

DET. BANKER-PEOPLE-CROSS

1 A. No.

2 Q. Your wife has a part-time job?

3 MR. ROSENFELD: Objection, your Honor. This is --

4 THE COURT: Sustained.

5 Q. Does your wife work?

6 MR. ROSENFELD: Objection: Asked and answered.

7 THE COURT: Sustained.

8 Q. Well, you did go over to a apartment 3D on McGraw  
9 Avenue, 2023, on either the late hours of the 27th of December  
10 of '09 or the early morning hours of December 25th of '09,  
11 correct?

12 A. Incorrect.

13 Q. Did you ever go to apartment 3D?

14 A. Yes.

15 Q. What date?

16 A. On the 25th.

17 Q. Yes, that's what I asked you. Either on the 25th --  
18 24th or 25th.

19 A. You said late night on the 24th early morning. I  
20 didn't get there until nine o'clock on the morning on the 25th.

21 Q. Nine o'clock of the morning of the 25th?

22 A. Yes.

23 Q. And there were lots of police officers there both  
24 uniformed and un-uniformed?

25 A. At that point there wasn't a lot. There were probably

JO-C

DET. BANKER-PEOPLE-CROSS

1 about five or six.

2 Q. Okay. Was crime scene there when you were there?

3 A. Yes, crime scene was there.

4 Q. And crime scene sketches and looks for evidence and  
5 takes measurement, things of that nature?

6 A. Yes.

7 Q. Did any police officer in your presence ever recover a  
8 weapon?

9 A. No.

10 Q. Did any police officer out of your presence, but  
11 subsequently bring to your attention that a weapon had been  
12 found in connection with this homicide?

13 A. Never.

14 Q. When you brought my client into his apartment in  
15 Brooklyn to dress him and handcuff him, did you search the  
16 apartment?

17 MR. ROSENFELD: Objection to the form.

18 THE COURT: I will allow it.

19 Q. Did you, yes or no, sir. Simple.

20 A. Search? No.

21 Q. Did you look around?

22 A. Yes.

23 Q. So what is the difference, if you can explain it to the  
24 jury, between looking around and searching?

25 A. Plain view and moving objects in order to find

JO-C

DET. BANKER-PEOPLE-CROSS

1 something.

2 Q. I see. So you never moved any objects?

3 A. Correct.

4 Q. By that time you were aware of the fact that the  
5 deceased had died by way of stab wounds?

6 A. Correct.

7 Q. And you are telling this jury that you had sufficient  
8 grounds to arrest my client for the murder of the sir, correct?

9 A. Yes.

10 Q. And you didn't move any objects within his room or his  
11 apartment to see whether or not there was a sharp object or a  
12 weapon in that apartment; is that correct?

13 A. Correct.

14 Q. And how long had you been a detective as of the date of  
15 arrest?

16 A. Five years approximately.

17 Q. And you had gone out and participated in many arrests  
18 and taken many video statements and interrogated many prisoners,  
19 correct?

20 A. Correct.

21 Q. Hundreds I think you began saying?

22 A. Correct.

23 Q. And here you are -- how many other detectives were with  
24 you when you went to Brooklyn and arrested Mr. Delgado?

25 A. Approximately five or six detectives and one sergeant.

JC-C

DET. BANKER-PEOPLE-CROSS

1 Q. Did any officer search the room or apartment of  
2 Mr. Delgado in Brooklyn when you arrested him?

3 A. Not that I was aware of.

4 Q. I see. Now -- now, you told Mr. Rosenfeld on direct  
5 examination that on December 25, '09 you interviewed seven or  
6 eight people at the scene of the party?

7 A. Yes.

8 Q. Of those seven or eight people that you interviewed at  
9 the scene of the party was Daniel Solis one of them?

10 A. I would have to refer back to my memo steno book.

11 Q. Please do so.

12 (Whereupon, the witness perused the document.)

13 THE COURT: Once again, what you are looking at  
14 and date.

15 MR. CANTOR: Memo steno book.

16 THE COURT: Let the gentleman tell me.

17 THE WITNESS: I am looking at my memo steno book  
18 of the 25th.

19 THE COURT: Review, refresh and answer as you best  
20 see fit.

21 THE WITNESS: Okay.

22 Q. Okay.

23 (Whereupon, the witness perused documents.)

24 A. Ready.

25 Q. Of the six and seven people that you interviewed was

JO-C

DET. BANKER-PEOPLE-CROSS

1 one Daniel Solis?

2 A. Yes, sir.

3 Q. Was one Wilfredo Cruz?

4 A. Yes.

5 Q. Was one Arileida Jimenez?

6 A. Yes.

7 Q. Now, we go to December 25th when you were in the  
8 interview room, you and Detective McSloy and David Delgado. You  
9 recall testifying about that?

10 A. Yes.

11 Q. And you had read him his Miranda rights, he  
12 acknowledged such and initialled such?

13 A. Correct.

14 Q. Then you didn't ask any questions but you handed him  
15 two blank pieces of paper issued by the police department,  
16 correct?

17 A. Correct.

18 Q. And you filled in the top that requires information by  
19 a police officer or a detective, correct?

20 A. Correct.

21 Q. Why did you hand him two rather than three or four or  
22 one? Did you think that two would be sufficient to cover  
23 whatever narrative he was going write?

24 A. I just, out of habit, gave two. If they needed more I  
25 hand them more.

JO-C

DET. BANKER-PEOPLE-CROSS

1 Q. No, that's not my question. My question is why not  
2 three? Why not four? Why not one?

3 A. You are right. I could have done that.

4 Q. But you didn't?

5 A. Correct.

6 Q. You drew the assumption that two pieces of blank paper  
7 would be sufficient for Mr. Delgado to write out his  
8 narrative --

9 MR. ROSENFELD: Objection.

10 THE COURT: Overruled.

11 Q. -- is that correct?

12 A. No. He could have took one and not mentioned it.

13 Q. So why did you hand him two?

14 MR. ROSENFELD: Objection.

15 A. Just out of habit.

16 Q. I see. Your technic, your habit?

17 A. There may have only --

18 MR. ROSENFELD: Sorry, your Honor. May the  
19 witness please answer.

20 MR. CANTOR: I am asking about technic and habit.

21 THE COURT: He is trying to answer.

22 MR. CANTOR: No. He is going --

23 MR. ROSENFELD: Objection.

24 MR. CANTOR: Let me withdraw the question.

25 THE COURT: All right.

JO-C

DET. BANKER-PEOPLE-CROSS

1 Q. Is it your technique and habit when interviewing a  
2 suspect or a defendant who is willing to answer questions to  
3 always hand them two blank pieces of papers?

4 A. No.

5 Q. On some occasions you hand them more than two?

6 A. Whatever --

7 Q. No --

8 MR. ROSENFELD: Your Honor, objection. He's  
9 interrupting him again.

10 Q. I am asking you, are there occasions when you hand the  
11 suspect more than two pieces of paper, yes or no. Simple  
12 question. Yes or no.

13 A. I may have in the past.

14 Q. You may have in the past. How about after this  
15 interview, did you ever interview with -- was your technic or  
16 policy to hand out --

17 MR. CANTOR: And may he be seated while I am  
18 examining this officer?

19 THE COURT: I am sure he is ready to pose --

20 MR. CANTOR: He is ready to pounce you mean, not  
21 pose.

22 MR. ROSENFELD: Objection, your Honor, improper.

23 THE COURT: Yes, unnecessary.

24 Q. Are there occasions when you handed people such as  
25 suspects or defendants more than two pieces of blank paper, the

JO-C

DET. BANKER-PEOPLE-CROSS

1 answer is yes or no?

2 A. Yes.

3 Q. Yes. And are there occasions that you hand suspects or  
4 defendants, but one piece of paper, yes or no?

5 A. Yes.

6 Q. On this occasion you handed my client two pieces of  
7 paper, correct?

8 A. Correct.

9 Q. Was there any particular reason why you thought that  
10 two pieces of paper would be sufficient to cover the narrative  
11 that my client was told by you to write?

12 MR. ROSENFELD: Objection to form.

13 THE COURT: Sustained.

14 Q. You gave him two pieces of paper, right?

15 A. Yes.

16 Q. You told him to write down his statement, correct?

17 A. Yes.

18 Q. And he proceeded to do so?

19 A. Yes.

20 Q. And were you of a mind -- as you were given him the two  
21 pieces of paper, were you of a mind to believe that the two  
22 pieces of paper would be sufficient to encompass my client's  
23 written statement?

24 A. Yes.

25 Q. But you've had occasions where people have asked for



JO-C

DET. BANKER-PEOPLE-CROSS

1 more paper?

2 A. Yeah. If he needed, I would have given it to him.

3 Q. That doesn't answer my question. What prior  
4 occasion --

5 MR. ROSENFELD: Objection.

6 Q. -- where people needed more than two pieces of paper,  
7 yes or no?

8 THE COURT: The objection is sustained.

9 Q. Did you ever in the past, prior to interviewing my  
10 client, give a prisoner or defendant more than two pieces of  
11 paper?

12 A. Yes.

13 Q. And after interviewing my client you've interviewed  
14 other suspects or defendants?

15 A. Correct.

16 Q. And did you hand them at times more than two pieces of  
17 paper for them to write their statements?

18 A. I don't remember.

19 Q. You don't remember?

20 A. No.

21 Q. You have a very good memory about this incident some 30  
22 months ago, correct?

23 MR. ROSENFELD: Objection.

24 THE COURT: No, I will allow it.

25 Q. Is that correct?

JO-C

DET. BANKER-PEOPLE-CROSS

1 A. Yes, cause I reviewed it.

2 Q. Do you have an ordinary, average, bad or excellent  
3 memory?

4 MR. ROSENFELD: Objection to form.

5 THE COURT: Sustained.

6 Q. Do you have a very good memory, sir?

7 A. No.

8 MR. ROSENFELD: Objection.

9 Q. You have an ordinary memory?

10 THE COURT: One second, Detective. You must wait  
11 until the Court rules when there is an objection.

12 The objection is sustained.

13 Q. Do you have an ordinary memory, an average memory?

14 MR. ROSENFELD: Objection.

15 THE COURT: Sustained.

16 MR. CANTOR: This is cross-examination, Judge.

17 THE COURT: The jury will make a determination  
18 about the memory and the credibility.

19 Q. So you gave him the two pieces of paper and you told  
20 him to write out the statement and to just call you, Detective,  
21 if he needed more, correct?

22 A. Yes.

23 Q. And you safeguarded the statement once you got it from  
24 him, correct?

25 A. Correct.

JO-C

DET. BANKER-PEOPLE-CROSS

1 Q. You safeguarded it by putting it in your desk, correct?

2 A. Correct.

3 Q. Were there other detectives in or about the area --

4 A. Yes.

5 Q. -- of your desk?

6 A. Yes.

7 Q. Were there other civilians being interviewed or talked  
8 to by these other police officers?

9 A. No.

10 Q. It was all police officers?

11 A. Yes.

12 Q. Of that you are sure?

13 A. Yes.

14 Q. Of that you are certain?

15 A. Yes.

16 Q. And that was 30 months ago, correct?

17 A. Correct.

18 Q. And you have an average memory?

19 MR. ROSENFELD: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Did you contact the DA's office or was it some other  
22 police officer?

23 A. Detective McSloy did.

24 Q. So when you answered Mr. Rosenfeld's questions you

25 heard me object to the Judge that it was hearsay that you hadn't

JO-C

DET. BANKER-PEOPLE-CROSS

1 done it?

2 MR. ROSENFELD: Objection to form.

3 Q. You remember me making that objection?

4 THE COURT: Sustained.

5 Q. In any event, you testified about the DA's office being  
6 contacted, correct, to take the video statement?

7 A. Correct.

8 Q. But it wasn't you who personally did that contacting,  
9 was it?

10 A. Correct.

11 Q. It was, Detective, you learned on later McSloy,  
12 correct?

13 A. I learned that day.

14 Q. You learned from McSloy later?

15 A. Yes. He said --

16 Q. No. I am just asking you such a simple question.

17 MR. ROSENFELD: Your Honor --

18 Q. Did you learn that from McSloy later on in the day, yes  
19 or no?

20 YR. ROSENFELD: I am objecting to the way the  
21 defense counsel is badgering the witness.

22 YR. CANTOR: I'm not badgering. Trying to get at  
23 the truth.

24 THE COURT: Just allow him to answer the question.

25 Q. Did you learn that from McSloy later on that day, yes

JO-C

DET. BANKER-PEOPLE-CROSS

1 or no?

2 A. Yes.

3 Q. See how easy it is.

4 MR. ROSENFELD: Objection to the colloquy.

5 THE COURT: No need for all of these comments and  
6 little words that are inserted in and there, and  
7 editorializing. Please, Mr. Cantor, I implore you that we  
8 may move along with efficiency and disparity. Stop  
9 incumbering the record.

10 Q. I think you testified on direct examination that the  
11 defendant was very cooperative?

12 A. Correct.

13 Q. And that was from the time you first encountered him at  
14 the doorway of his apartment in Brooklyn until you lost sight of  
15 him in the borough headquarters in the Bronx; is that correct?

16 A. Correct.

17 Q. Whatever instruction, command or direction you gave him  
18 he followed?

19 A. Correct.

20 Q. And he answered all questions put to him by the  
21 Assistant District Attorney in your presence while it was being  
22 videotaped?

23 A. Correct.

24 Q. And even when the clock tilted over, repositioned it so  
25 it could be seen, correct?

JO-C

DET. BANKER-PEOPLE-CROSS

1 A. Correct.

2 Q. When was the case marked closed out? Was that after  
3 the -- was that after the lineups were conducted on the 25th?

4 A. No.

5 Q. When? What date?

6 A. After I finished typing --

7 Q. No, no. Date. Date. Date.

8 A. Oh, I don't know.

9 Q. Well, was it six months later?

10 A. No.

11 Q. Was it five months later?

12 A. No.

13 Q. Was it four months later?

14 A. No.

15 Q. Three months later?

16 A. Within days of the incident.

17 Q. I see. It was closed out?

18 A. Correct.

19 Q. Now, you had a deceased who had died by way of stab  
20 wounds, correct?

21 A. Correct.

22 Q. So it would be an important evidentiary matter for  
23 police to recover the weapon that caused those inflictions, that  
24 lead to these physical inflictions that lead to the deceased's  
25 death, correct?

JO-C

DET. BANKER-PEOPLE-CROSS

1 MR. ROSENFELD: Objection.

2 THE COURT: No, I will allow that.

3 A. No, absolutely not.

4 Q. It wouldn't be important?

5 A. No, no.

6 Q. Okay. You've answer the question.

7 MR. CANTOR: And I have no further questions.

8 THE COURT: Thank you, Mr. Cantor.

9 MR. CANTOR: On cross-examination.

10 (Continued onto the next page.)

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1 Q Were you aware that police officers searched for a  
2 weapon in this case?

3 A Correct, yes.

4 Q Where was that search done?

5 A Inside apartment 3-D of 2033 McGraw, outside the  
6 hallway, the stairwell, the premises outside the building. I  
7 personally completed a daylight search when I responded. I did  
8 a DD-5 on that.

9 MR. CANTOR: Objection. Object to that. Ask to  
10 be stricken. He did a DD-5 on that. What does that have  
11 to do --

12 MR. ROSENFELD: Objection to the colloquy.

13 THE COURT: All right.

14 MR. CANTOR: Will you strike that, sir?

15 THE COURT: Stricken. Disregard.

16 THE WITNESS: Yes, sir.

17 Q On the 26th, you took the statement from the  
18 defendant, correct?

19 A Yes.

20 Q And he indicated on the statement that he didn't  
21 remember where the knife went after he left the apartment,  
22 right?

23 A Correct.

24 Q And you searched all around the apartment area and  
25 outside?



1 A Yes.

2 Q Looking at People's Exhibit 16 in evidence, the head  
3 coverings of the fillers and the defendant, can you please tell  
4 us what you used as head covering for them?

5 A Black wool caps.

6 MR. ROSENFELD: Thank you. I have no further  
7 questions.

8 RECROSS EXAMINATION

9 BY MR. CANTOR:

10 Q If as you say it was not important to recover the  
11 weapon, why were you searching, you yourself, apartment 3-D the  
12 hallway, the stairway and outside of 2033 McGraw Avenue? You  
13 wanted to recover the weapon, did you not?

14 A Yes.

15 Q But it was not important according to your testimony  
16 two or three minutes ago, do you remember making that  
17 testimony? Yes or no?

18 MR. ROSENFELD: Your Honor, I object to the tone.

19 Q Do you remember making that testimony? Yes or no,  
20 sir?

21 A I can't answer yes or no. Can I give an explanation?

22 THE COURT: No. At this point, it's only yes or  
23 no.

24 A Repeat the question.

25 MR. CANTOR: I'm sure the court reporter will be

1 ever so happy to do that.

2 THE COURT: I don't believe we need it. The  
3 answer is yes or no.

4 THE WITNESS: To which question, sir?

5 THE COURT: The last question. If you don't  
6 recall it, I'll have the reporter read it.

7 THE WITNESS: Yes, please read it.

8 THE COURT: Please.

9 (Whereupon, the requested portion was read by the  
10 court reporter.)

11 A Yes.

12 MR. CANTOR: That's it. No further questions of  
13 this good retired detective.

14 RE-REDIRECT EXAMINATION

15 BY MR. ROSENFELD:

16 Q Detective, regarding this question about looking for  
17 the weapon, did you want to explain something?

18 MR. CANTOR: Objection to the form of that  
19 question on redirect.

20 THE COURT: I'll allow it.

21 MR. CANTOR: You just want to explain something?

22 MR. ROSENFELD: Objection.

23 THE COURT: He was cut off in his answer.

24 MR. CANTOR: I'm sorry, your Honor?

25 THE COURT: His answer was continuing. It was

1 cut off.

2 MR. CANTOR: By me?

3 THE COURT: Yes.

4 MR. CANTOR: Then let him continue with an  
5 answer.

6 MR. ROSENFELD: Your Honor, I'm objecting to  
7 this.

8 MR. CANTOR: I'll step back.

9 THE COURT: The objection for the record is  
10 sustained.

11 MR. CANTOR: How about the form of the question?

12 THE COURT: People can reposit the question they  
13 just asked.

14 MR. CANTOR: In a proper form.

15 THE COURT: Let us see.

16 Q In regard to the last question asked you by Mr.  
17 Cantor, did you have a full opportunity to explain your answer?

18 A No.

19 Q Could you please explain your answer?

20 A Although the knife is important to the case, it is not  
21 necessary. You don't need to recover the weapon to prove that  
22 weapon was used for the crime. Is it nice to have it? Yes.  
23 If not available, there's other ways of proving that it was  
24 that item. That's what I meant by saying that.

25 MR. ROSENFELD: Nothing further.

tr/d Det. Banker - People - Re-Recross

1 Let the record indicate the defense counsel is  
2 getting up laughing. Objection.

3 RE-RECROSS EXAMINATION

4 BY MR. CANTOR:

5 Q If you don't recover --

6 MR. ROSENFELD: Objection.

7 Q -- recover the weapon --

8 THE COURT: I'm happy that he's in a jovial mood.

9 MR. ROSENFELD: He's the only one.

10 THE COURT: You have a question, please.

11 MR. CANTOR: Yeah, sure.

12 Q If you don't recover the weapon, how can you prove  
13 that who was responsible for the wounds of the deceased that  
14 led to his death?

15 MR. ROSENFELD: Objection.

16 Q That's what you've told us.

17 THE COURT: The objection is sustained. The  
18 Court will give the appropriate standard at the time.

19 Q You did tell this jury it was not important to recover  
20 the knife, you clearly told that to the jury, correct?

21 MR. ROSENFELD: Objection. Asked and answered.

22 THE COURT: It's been explained.

23 MR. CANTOR: Oh, it has?

24 Q So you told Mr. Rosenfeld less than a minute ago it  
25 wasn't important, but one of the purposes of recovering a knife

tr/d Det. Banker - People - Re-Recross

1 would be to see whether or not it was consistent with the  
2 wounds inflicted, correct?

3 A Correct.

4 Q And you told this jury that it wasn't important, but  
5 you searched the apartment, the hallway, the stairwell,  
6 outside, that's what you did, right?

7 A Correct.

8 Q And your purpose was to recover a knife, correct?

9 A Yes.

10 Q And there's a police laboratory that can determine  
11 whether or not and there's a chief medical office, Office of  
12 the Chief Medical Examiner that can determine whether or not  
13 the stab wounds that the deceased sustained were consistent  
14 with any weapon recovered, correct?

15 MR. ROSENFELD: Objection.

16 THE COURT: The objection is sustained. Mr.  
17 Cantor, please. The jury has already been informed that if  
18 they believe a knife was employed here, they're entitled to  
19 that belief despite the fact that the People have no  
20 obligation to produce that knife.

21 MR. CANTOR: No. But it may affect the jury's --

22 MR. ROSENFELD: Objection.

23 THE COURT: Could do many things, but we don't  
24 invite speculation. Please, now, do you have any other  
25 questions?

tr/d Det. Banker - People - Re-Recross

1 MR. CANTOR: Yes.

2 Q You told Mr. Rosenblatt that it would be very relevant  
3 to determine how you have recovered the knife, whether or not  
4 that knife was consistent with the nature of the stab wounds  
5 sustained by the deceased, you told him that, did you not?

6 MR. ROSENFELD: Objection. After two weeks at  
7 least get my name right.

8 THE COURT: Sustained.

9 MR. CANTOR: Sustained?

10 THE COURT: Yes.

11 MR. CANTOR: He says it's not important and then  
12 he says it is important.

13 THE COURT: He's explained himself. It's up to  
14 the jury to determine whether they wish to accept or reject  
15 that allegation, Mr. Cantor.

16 MR. CANTOR: It's up to the jury.

17 MR. ROSENFELD: Objection to any colloquy.

18 THE COURT: There's no need for further comment.  
19 Your exception is noted.

20 MR. ROSENFELD: People have no further questions,  
21 your Honor. Thank you, Detective.

22 THE COURT: Detective, you're excused.

23 THE WITNESS: Thank you, sir.

24 (Whereupon, the witness left the stand and the  
25 courtroom.)

1 THE COURT: Counselors, please approach.

2 (Whereupon, there was a discussion held, off the  
3 record, at the bench, among the Court, the assistant  
4 district attorneys, defense counsel and outside the hearing  
5 of the defendant and the jury.)

6 (Whereupon, the following takes place, on the  
7 record, in open court, in the presence of the Court, the  
8 assistant district attorneys, defense counsel, the  
9 defendant and the jury.)

10 THE COURT: Madam Forelady, ladies and gentlemen  
11 of the jury, we're now recessing for lunch. Have a  
12 pleasant lunch. Remember the cautions. Be back at 2  
13 o'clock and we'll continue towards completion of the  
14 People's case. We'll see you then. Have a pleasant lunch.

15 (Whereupon, the jury left the courtroom.)

16 THE COURT: Jury having been excused, Mr.  
17 Rosenfeld.

18 MR. ROSENFELD: Your Honor, this is regarding  
19 evidence markings. We have several items that were marked.

20 THE COURT: Please mark everything.

21 MR. ROSENFELD: But there was a mistake made by  
22 me. People's Exhibit 10 had been previously marked was the  
23 video statement redacted that we used for identification  
24 and to show in court to defense counsel and your Honor  
25 earlier. I introduced it today as People's Exhibit 15. We

1 put that into evidence.

2 THE COURT: People's 10 was the tape, yes, the  
3 video.

4 MR. ROSENFELD: Right. Now I've introduced that  
5 same item People's Exhibit 10 as People's Exhibit 15, which  
6 we put into evidence.

7 MR. CANTOR: 10 is for ID so it makes no  
8 difference. It will never be seen by the jury. It makes  
9 no difference. 15 is in evidence so there's really no  
10 problem.

11 MR. ROSENFELD: That's all I'm pointing out to  
12 your Honor for purposes of all our record-keeping items,  
13 that's the same item. People's Exhibit 10 was only marked  
14 for ID. People's Exhibit 10 is now People's Exhibit 15 in  
15 evidence.

16 MR. CANTOR: I consent.

17 THE COURT: Very good.

18 (Whereupon, a lunch recess was taken.)

19 A F T E R N O O N S E S S I O N

20 COURT OFFICER: Jury entering.

21 (Whereupon, the jury entered the courtroom.)

22 (Whereupon, the following takes place, on the  
23 record, in the robing room, in the presence of the Court,  
24 the assistant district attorneys, defense counsel, and  
25 outside the presence of the defendant and the jury.)



1 THE COURT: Is your gentleman coming in? You  
2 waive his presence?

3 MR. CANTOR: I'll waive his presence.

4 THE COURT: Mr. Rosenfeld.

5 MR. ROSENFELD: All right, Judge. For the  
6 record, People have the medical examiner ready to testify.

7 THE COURT: Excellent.

8 MR. ROSENFELD: And we have a disk that contains  
9 photos we wish to introduce through the medical examiner.  
10 I printed out eight of the nine photographs.

11 THE COURT: May I see them?

12 MR. ROSENFELD: Yes (handing.) The ninth one is  
13 on here. I just didn't get the printout from the person  
14 downstairs. It's the same photo here. And all of the  
15 photos are on disk. We're going to use our disk in the  
16 computer to display them.

17 MR. CANTOR: To make it easier, Judge, whatever  
18 you're reviewing now, no objection.

19 THE COURT: That's fine.

20 MR. ROSENFELD: So all these photos are contained  
21 on the disk. I will move the disk into evidence and only  
22 as to the photos that were numbered.

23 THE COURT: That's fine.

24 MR. ROSENFELD: So when we get to number 73 which  
25 is a photograph of the neck, the jugular vein, the

1 hemorrhaging that was inside that was the result of the  
2 stab wound to the jugular vein, which is one of the main  
3 causes of death, cause of death itself was stab wound of  
4 the left side of neck with injury of carotid artery,  
5 jugular vein and larynx, which are portrayed in this  
6 photograph.

7 In order to really show the nature of the injury  
8 is to show this photograph because People's photograph  
9 number 47 merely shows the stab wound on the outside, but  
10 it doesn't show the nature and the depth of it. People  
11 feel this photograph is necessary for the doctor to explain  
12 and explain to the jury how serious this injury was. This  
13 is really one of the main injuries of causing the death.

14 THE COURT: You said left side of --

15 MR. ROSENFELD: Left side of the neck. I will  
16 argue the same things I argued when we looked at the  
17 photographs from the crime scene, People versus Wood and  
18 the subsequent cases allowing the use of photographs if  
19 they're probative of something necessary in evidence.

20 THE COURT: Let's not use it.

21 Mr. Cantor.

22 MR. CANTOR: I'm not objecting to the others.  
23 They can all come in.

24 THE COURT: You don't just leave. We're not  
25 done.

1 MR. CANTOR: I was told the purpose.

2 THE COURT: That's correct. I may want to say  
3 something for the record. He may want to say something for  
4 the record.

5 MR. CANTOR: I thought his purpose was  
6 photographs.

7 MR. ROSENFELD: Note People's exception.

8 THE COURT: Okay. Very good.

9 MR. CANTOR: May I?

10 MR. ROSENFELD: We'll mark for identification  
11 just in terms of procedure the CD.

12 THE COURT: Yes.

13 MR. ROSENFELD: I will indicate the photos on the  
14 CD if you want me to.

15 THE COURT: Well, whatever the number is, make  
16 them A, B, C, D or 1, 2, 3, 4. How many pictures?

17 MR. ROSENFELD: Eight.

18 THE COURT: Okay.

19 MR. CANTOR: So what's the next number we're up  
20 to?

21 MR. ROSENFELD: I think it's 16.

22 MR. CANTOR: So it's 16.

23 MS. MASON: It's 17.

24 MR. ROSENFELD: If we premark them.

25 THE COURT: If you'd like, yes, that's fine.

1 MR. ROSENFELD: Plus there will be a body head  
2 diagram.

3 MR. CANTOR: This is something else that they are  
4 offering?

5 MR. ROSENFELD: Yes, that's why I'm showing it to  
6 you.

7 MR. CANTOR: That's why I will be seeing it.

8 THE COURT: What do you wish to show? Just this  
9 one?

10 MR. ROSENFELD: Yes.

11 MR. CANTOR: Can I look at it, Judge?

12 THE COURT: Sure.

13 (Hanging.)

14 MR. ROSENFELD: This is an overview. It's the  
15 anatomical sketch of the head in different positions to  
16 show where the wounds were located.

17 MR. CANTOR: The pictures certainly speak much  
18 more eloquently, all of the pictures, none of which I've  
19 objected to except the one you're excluding, if you look at  
20 the pictures, the pictures are much more probative than the  
21 sketch. The sketch is an external sketch.

22 THE COURT: But this serves with the  
23 measurements.

24 MR. CANTOR: Here's the ruler, Judge.

25 THE COURT: I know. I don't find this

1 graphically objectionable.

2 MR. CANTOR: No. It's redundant. That's the  
3 reason. If you look at the pictures, you'll note the ruler  
4 on the picture.

5 THE COURT: Yes, I see it.

6 MR. CANTOR: So the measurements are much more  
7 clearly defined and discernible from the photographs and  
8 this is just -- it's confusing. It's confusing. It has no  
9 place.

10 THE COURT: At the risk of being confusing, I  
11 will permit it.

12 MR. CANTOR: That one?

13 THE COURT: Just that one.

14 MR. CANTOR: Can I see it?

15 (Handing.)

16 MR. CANTOR: Now, was this prepared by the  
17 doctor?

18 MR. ROSENFELD: Yes.

19 MR. CANTOR: Yes, it was.

20 THE COURT: All right.

21 MR. CANTOR: I intend to read it, Judge, so maybe  
22 I can bring something to your attention.

23 THE COURT: Well, if it can save time later, by  
24 all means.

25 MR. CANTOR: It has all sorts of medical ease on

1 it. I note my exception.

2 THE COURT: That's why we have an expert.

3 MR. CANTOR: She is a witness until your Honor  
4 says she's an expert.

5 (Whereupon, the following takes place, on the  
6 record, in open court, in the presence of the Court, the  
7 assistant district attorneys, defense counsel, the  
8 defendant and the jury.)

9 THE COURT: Good afternoon.

10 JURORS: Good afternoon.

11 THE COURT: Mr. Clerk.

12 THE CLERK: Case on trial continued, People of  
13 the State of New York against David Delgado, district  
14 attorney's office, defense counsel, defendant and the sworn  
15 jurors are all present.

16 MR. ROSENFELD: At this time, may I have these  
17 items premarked 17-A, B following.

18 THE COURT: A through?

19 MR. ROSENFELD: 17 and then A through H.

20 THE COURT: Very well.

21 MR. ROSENFELD: 17 and then 17-A through H.

22 THE COURT: All right. You may call your next  
23 witness. Continuing, ladies and gentlemen, does anyone  
24 have anything to report? Can you all assure the Court you  
25 have followed its instructions?

tr/d Dr. Kappen - People - Direct

1 JURORS: Yes.

2 THE COURT: Very good.

3 MR. ROSENFELD: Judge, may we go ahead and  
4 premark?

5 THE COURT: Yes.

6 {Whereupon, the items referred to were marked  
7 People's Exhibit Numbers 17-A through 17-H for  
8 identification.}

9 COURT OFFICER: Witness entering.

10 {Whereupon, the witness entered the courtroom and  
11 takes the stand.}

12 THE CLERK: Do you solemnly swear the testimony  
13 you give to this Court shall be the truth, the whole truth  
14 and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 COURT OFFICER: Witness gives her name as Dr.  
17 Carolyn Kappen, K-A-P-P-E-N, Office of Chief Medical  
18 Examiner of the City of New York.

19 THE COURT: Good afternoon, Doctor.

20 THE WITNESS: Good afternoon.

21 THE COURT: Just sit back, be comfortable, ma'am,  
22 you know the routine. Answer only what is asked. Keep  
23 your voice up.

24 THE WITNESS: Okay.

25 THE COURT: You may inquire.

1 DIRECT EXAMINATION

2 BY MR. ROSENFELD:

3 Q Good afternoon, Dr. Kappen.

4 A Good afternoon.

5 Q Dr. Kappen, how long have you been with the Medical  
6 Examiner's office?

7 A July 1st it was 15 years.

8 Q Could you please explain the function of the medical  
9 examiner's office and your specialty?

10 A Sure. The Office of the Chief Medical Examiner is run  
11 by the City of New York in this jurisdiction. It's not  
12 affiliated with any other hospital. My paycheck comes from the  
13 City of New York or unbiased in determining what we do.

14 MR. CANTOR: Judge, she's facing the jury. It  
15 tends to drop.

16 THE COURT: Keep your voice up.

17 MR. CANTOR: So if she could keep addressing it  
18 forward.

19 MR. ROSENFELD: Objection to defense counsel  
20 giving instructions.

21 MR. CANTOR: It's an application, Judge.

22 THE COURT: She'll speak a little louder.

23 MR. CANTOR: That's all. Why do I have to --

24 THE COURT: Why do you have to keep speaking?

25 MR. CANTOR: Why does he?



1 MR. ROSENFELD: Objection.

2 MR. CANTOR: I'd like to hear it. I'd like my  
3 client to hear it.

4 THE COURT: Do you hear it, Mr. Delgado?

5 THE DEFENDANT: I can't barely hear it.

6 THE COURT: All right. She'll keep her voice up.  
7 If she shouldn't reach that far, just raise your hand.

8 THE DEFENDANT: Okay.

9 A At the Office of Chief Medical Examiner, as a medical  
10 examiner we're employed to determine the cause of death when  
11 someone dies and the manner of death when someone dies, whether  
12 it's a natural death, a complication of therapy, an accident, a  
13 suicide or a homicide.

14 Q Could you please explain what forensic and anatomical  
15 pathology is?

16 A Sure. First I'll start with anatomical pathology.  
17 Pathology is a subspecialty of medicine, sort of like surgery  
18 is a subspecialty of medicine. Surgeons perform operations.  
19 Pathologists study disease. Pathologists often work in  
20 hospitals. They run the laboratory. They oversee the  
21 laboratory if they draw your blood or urine and the testing on  
22 it. If you have a tumor, it's removed by a surgeon, but it's  
23 brought to the pathologist to look at it specially fixed under  
24 a microscope to determine whether it's cancer or not. That's  
25 general pathology. And specifically, anatomical pathology

1 where they're looking at tumors under the microscope.

2 Then there's a subspecialty in pathology called  
3 forensic pathology and that's when you get specialized training  
4 to look at injuries, to look at gunshot wound type of injuries,  
5 blunt impact injuries such as lacerations, contusions and  
6 abrasions, sharp force injuries.

7 MR. CANTOR: Sharp force?

8 A Injuries.

9 MR. CANTOR: Sharp force?

10 A Injuries.

11 MR. CANTOR: Sharp force injuries? I couldn't  
12 hear.

13 THE COURT: I believe that's what she said.

14 MR. CANTOR: Okay. Sharp force injuries.

15 A And that is all part of forensic pathology, and that  
16 is most importantly taught to you as a pathologist to determine  
17 the cause of death when someone dies and the manner of death  
18 when someone dies.

19 Q Thank you, Doctor. Could you please tell the ladies  
20 and gentlemen of the jury your background and your training.

21 A Sure. I did an undergraduate degree in medical  
22 technology. I then went on to medical school. I did my  
23 pathology residency training program for three and a half years  
24 at St. Luke's Roosevelt Hospital in Manhattan. After I did  
25 that, I spent a year in a specialized training program in

1 pathology called forensic neuropathology, that's the study of  
2 trauma to the brain, I did that for one year at the Office of  
3 Chief Medical Examiner in Manhattan.

4 After that year, I did a specialized fellowship  
5 training program in pathology called forensic pathology, that  
6 was for one year, that was also done at the medical examiner's  
7 office in Manhattan. After I finished those two years, I then  
8 worked five years at the Office of the Chief Medical Examiner,  
9 but in our Brooklyn office, five years I spent there. And then  
10 I've been in the Bronx for the last seven.

11 Q Thank you, Doctor. Are you licensed to practice  
12 medicine in New York?

13 A Yes, I am.

14 Q Can you please explain what an autopsy is?

15 A Sure. An autopsy is the external examination and the  
16 internal examination of the body. It starts first by just  
17 looking at the body with your eyes and noting physical  
18 attributes such as height, weight, hair color, eye color, any  
19 therapy on the outside of the body, any natural disease, any  
20 injuries.

21 Then after the external examination is done, a Y  
22 incision is made on the body and that's what you've probably  
23 seen in movies or television where the Y starts at one shoulder  
24 and the other shoulder, comes down to the chest and goes down  
25 the abdomen that allows you to look at all the internal organs

1 of the abdomen for any natural disease or injury. And then we  
2 do a different type of incision on the head to be able to look  
3 at the brain importantly for injury or disease. And that's the  
4 internal aspect of the autopsy.

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6 (Continued on next page.)

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People - DR. CAROLYN KAPPEN - voir dire

1549

1 Q. Doctor, approximately, how many autopsies have you  
2 performed in your career?

3 A. Last that I counted I performed, approximately, 2000  
4 autopsies in my career.

5 Q. And you have -- have you performed autopsies involving  
6 stab wounds?

7 A. Yes, I have.

8 Q. Can you give a number or percentage approximately?

9 A. You know I really can't, I didn't take the time to  
10 count them knowing this question.

11 Q. Okay. Doctor, have you testified as an expert before  
12 in the courts?

13 A. Yes, I have.

14 Q. Have you testified here in Supreme Court?

15 A. Yes, I have.

16 Q. And have you testified in other courts either here in  
17 Bronx County or other places?

18 A. Yes, I have.

19 Q. And what courts have you testified in?

20 A. I've testified in Supreme Court and Family Court in  
21 Brooklyn, the Bronx, Queens and Manhattan. I've also testified  
22 in courts in Westchester County, White Plains.

23 Q. And when you've testified in these courts have you  
24 been declared a expert in anatomic and forensic pathology?

25 A. In forensic pathology, okay.

E-1jb

People - DR. CAROLYN KAPPEN - voir dire

1550

1 Q. And, Doctor, do you continue your training as you work  
2 in the medical examiners office?

3 A. Yes, with ongoing continuing education.

4 Q. Okay. Do you perform that education or teach or you  
5 go to courses; how does that's work?

6 A. It's a combination of the three. We get guest  
7 lectures coming in seminars that we have weekly. You can also  
8 attend conferences if you chose to, reading things like that.

9 Q. Did you attend conferences?

10 A. Rarely, just because I'm too busy working, but you  
11 know I have in the past.

12 Q. Thank you.

13 MR. ROSENFELD: Your Honor, at this time I move  
14 that Dr. Kappen's testimony be accepted as expert testimony  
15 in forensic pathology such that she state her opinion --

16 MR. CANTOR: Certainly so, your Honor.

17 THE COURT: All right. Based on education,  
18 training and experience without objection she is so  
19 declared an expert in the field of pathology.

20 MR. CANTOR: Forensic pathology.

21 THE COURT: Forensic pathology.

22 MR. ROSENFELD: Thank you.

23 MR. CANTOR: Will you explain to the jury what  
24 that allows her to do?

25 THE COURT: She's given ample.

E-ljb

People - DR. CAROLYN KAPPEN - direct

1551

1 MR. CANTOR: I'm sorry.

2 THE COURT: She's given ample.

3 MR. CANTOR: She can offer opinion --

4 THE COURT: Yes, she can, of course.

5 MR. CANTOR: -- as an expert witness.

6 MR. ROSENFELD: May I continue?

7 THE COURT: Yeah, sure.

8 MR. ROSENFELD: Thank you.

9 DIRECT EXAMINATION

10 BY MR. ROSENFELD:

11 Q. Dr. Kappen, pursuant to your duties as medical  
12 examiner did there come a time that you conducted an autopsy on  
13 an individual by the name of George Talavera on or about  
14 December 25, 2009?

15 A. Yes, I did.

16 Q. And where was that performed?

17 A. That was performed at the Office of the Chief Medical  
18 Examiner in the Bronx office where I work.

19 Q. And was that autopsy case given a medical examiner's  
20 case number?

21 A. Yes, it was.

22 Q. And what was the case number assigned?

23 A. It was BX for the Bronx 09 for 2009, 5090.

24 Q. Doctor, prior to coming to court today have you had an  
25 opportunity to review your autopsy report and photos that were

E-ljb

People - DR. CAROLYN KAPPEN - direct

1552

1 taken during the autopsy of George Talarvera?

2 A. Yes, I did.

3 Q. what is an MLI?

4 A. An MLI is the acronym for medical legal investigator.

5 Q. And what does an MLI do, he or she?

6 A. They are employed by our office to go to scenes and to  
7 receive information from doctors when there is a detective that  
8 by law needs to be reported to our office.

9 Q. And based upon your review of this case did a medical  
10 legal examiner respond to 2033 McGraw Avenue, apartment 3D on or  
11 about December 25, 2009?

12 MR. CANTOR: I mean if she personally knows and  
13 was there I have no objection, but if it's based on hearsay  
14 I certainly do object.

15 THE COURT: The objection is overruled.

16 MR. CANTOR: won't you allow the prefatory  
17 question to be asked was she there?

18 THE COURT: You may.

19 MR. CANTOR: Thank you.

20 Q. You didn't go to those crime scenes, did you?

21 A. No, I'm sleeping because I have to perform the autopsy  
22 in the morning. They go in the middle of the night.

23 MR. CANTOR: So any questions dealing with the  
24 medical or legal investigator would be based upon hearsay.  
25 She was not present and thus, I would raise an objection

E-ljb



People - DR. CAROLYN KAPPEN - direct

1553

1 and maybe --

2 MR. ROSENFELD: Objection to this colloquy.

3 MR. CANTOR: It may be one word.

4 MR. ROSENFELD: One word.

5 MR. CANTOR: It may be premature, but I am  
6 objecting.

7 MR. ROSENFELD: Objection to this colloquy.

8 THE COURT: Yes, yes. Your objection is  
9 overruled firstly.

10 MR. CANTOR: She wasn't there, Judge.

11 THE COURT: I said your objection is overruled.  
12 No need to editorializing.

13 MR. CANTOR: Exception.

14 THE COURT: Noted.

15 BY MR. ROSENFELD:

16 Q. Were you able to give an answer did the medical legal  
17 investigator respond to that scene?

18 A. Yes, they did.

19 Q. And did you review notes from the medical legal  
20 investigator report?

21 A. Yes, I did.

22 Q. And prior to coming to court today have you and I had  
23 an opportunity to discuss this case in preparation for trial?

24 A. Yes.

25 Q. And did you have an opportunity to review your autopsy

E-ljb

People - DR. CAROLYN KAPPEN - direct

1554

1 report and notes?

2 A. Yes, I did.

3 Q. You have an opportunity to review any photographs from  
4 the crime scene?

5 A. Not from the crime scene, but from the -- what our  
6 medical legal investigator took pictures of at the scene for our  
7 triage in the morning of the case and it's disposition.

8 MR. CANTOR: I can't hear when she turned to you  
9 and it's --

10 THE WITNESS: Disposition.

11 Q. When, I'm sorry? Before you began your autopsy did  
12 you take pictures of George Talarvera's body?

13 A. I didn't, but we have a photographer that's employed  
14 to do so.

15 Q. And was that done in your presence?

16 A. Yes.

17 Q. Now, when you began your autopsy what was the first  
18 thing that you did?

19 A. I verify the identification of the medical examiner's  
20 case number.

21 Q. Please continue, then what?

22 A. Then the physical attributes are noted: Height,  
23 weight, hair color, eye color, external examination of the body.  
24 Then I note, I write down any postmortem changes, scars,  
25 tattoos, clothing and after that therapeutic procedures and then

E-ljb

People - DR. CAROLYN KAPPEN - direct

1555

1 most importantly in this case injuries.

2 Q. Okay. Let's start with the external examination. Can  
3 you please tell us what the results of your external examination  
4 was?

5 A. Well, the decedent was well nourished, well developed.  
6 He was six foot and 167 pounds. He had lightly pigmented skin  
7 and straight black hair shaved close to the scalp, quarter inch  
8 mustache and beard.

9 Q. And you mentioned about postmortem changes; what is  
10 that?

11 A. Postmortem changes are the changes that occur after  
12 death; one of them is called rigor mortis, that's the stiffening  
13 of the body after that I evaluated. Rigor mortis is the  
14 settling of the remaining blood in the body after that I also  
15 noticed and then the basically touching the body and noting,  
16 getting a generalized temperature of the body.

17 Q. Doctor, you mentioned there was clothing submitted  
18 with the body?

19 A. He was received in clothing.

20 Q. Could you tell us what clothing you received him in?

21 A. Sure, he was received in sweatpants with boxer  
22 underwear.

23 MR. CANTOR: Judge, the witness is reading from  
24 something.

25 THE COURT: That's permissible. Just tell us

E-ljb

People - DR. CAROLYN KAPPEN - direct

1556

1 what it is.

2 MR. CANTOR: No, Judge, I was going to say --

3 THE WITNESS: It's the --

4 MR. CANTOR: I was going to say I have no  
5 objection given the multitude of her duties.

6 THE COURT: Yes.

7 MR. CANTOR: If she reads.

8 THE WITNESS: It's the autopsy report that I  
9 dictated and prepared.

10 THE COURT: Dated?

11 THE WITNESS: The 25th of December, the date that  
12 I did it and I can tell you the date I signed it if you  
13 needed that.

14 MR. CANTOR: What year was that, Judge?

15 THE WITNESS: 2009.

16 THE COURT: Mr. Rosenfeld.

17 Q. Yes, you may continue, Doctor.

18 A. Apart from the sweatpants he had socks on and boots.  
19 Accompanying his body was a bloody white T-shirt, a green  
20 bloodstained outerwear jacket, a tan sweatshirt and a red  
21 T-shirt.

22 Q. All right. Once you've completed your external  
23 examination of the body did you then begin an internal  
24 examination -- I'm sorry, let me withdraw that, I'm sorry. In  
25 continuing your external examination of the body did you note

E-1jb

People - DR. CAROLYN KAPPEN - direct

1557

1 injuries to the body?

2 A. Yes, the decedent was undressed, cleaned off,  
3 photographed and I noted immediately there were five stab wounds  
4 to his body from his neck up.

5 MR. ROSENFELD: At this time I am going to ask  
6 the witness be shown People's Exhibit 17.

7 (Whereupon the requested exhibit was shown to the  
8 witness.)

9 Q. Doctor, looking at People's 17 can you please identify  
10 what it is that you are holding?

11 A. Sure, this is a diagram that I used to illustrate the  
12 stab wounds on the decedent during the autopsy.

13 Q. That's the diagram that you created?

14 A. Yes.

15 Q. And is that a fair and accurate and proper diagram of  
16 the injuries as you noticed them back on December 25th of 2009?

17 A. Well, this diagram shows the stab wounds on the sides  
18 and the front of the decedent. It doesn't show the stab wound  
19 to the back of the head or the contusions on the back of the  
20 head.

21 Q. Okay. So for purposes of the -- everything except the  
22 back of the head injuries that you just described is that a fair  
23 and accurate description?

24 A. Yes.

25 MR. ROSENFELD: Your Honor, at this time I move

E-ljb

People - DR. CAROLYN KAPPEN - direct

1558

1 People's Exhibit 17 into evidence.

2 THE COURT: Share it with Mr. Cantor.

3 MR. CANTOR: No objection.

4 THE COURT: There being no objection it is so  
5 moved and proffered into evidence and received as such.

6 (A diagram of the decedent was received and  
7 marked for in evidence as People's Exhibit 17.)

8 COURT OFFICER: People 17 in evidence so marked.

9 MR. ROSENFELD: Your Honor, at this point I am  
10 going to publish People's Exhibit 17.

11 THE COURT: You may.

12 (Whereupon the diagram is published to the jury  
13 at this time.)

14 Q. Okay. Doctor, just to start out, can you give us  
15 using People's Exhibit 17 a point out of the different injuries  
16 that you observed as you did your external examination?

17 A. Sure, may I stand up?

18 MR. ROSENFELD: Your Honor, may the witness  
19 please rise and stand up next to the TV?

20 THE COURT: Yes.

21 THE WITNESS: May I use my notes?

22 THE COURT: You may consult your notes.

23 THE WITNESS: Thank you.

24 MR. CANTOR: Can she keep her voice up, your  
25 Honor?

E-ljb

People - DR. CAROLYN KAPPEN - direct

1559

1 THE COURT: And please keep your voice up.

2 THE WITNESS: I sure will.

3 A. So the first stab wound to the decedent is on the  
4 right side of his face, that's this diagram here (indicating).

5 MR. ROSENFELD: Indicating the diagram on the  
6 left.

7 THE COURT: So indicating.

8 A. And there is an R above it so, you know, its the right  
9 side. Here is the ear (indicating) and the right side of the  
10 face. Here is the diagram (indicating) and I wrote in right  
11 here that there is a stab wound, right. Actually I put it not  
12 in the best spot, I am not a good artist. It's actually in  
13 front of the ear a little bit (indicating) and that is that stab  
14 wound (indicating), I described as being on the right side of  
15 the jaw. That stab wound was five -- it's an inch in length and  
16 then we always take measurements from the top of the head to  
17 where the injury is and right or left of the midline. This  
18 injury (indicating) was seven-and three-quarters inches below  
19 the top of the head. Three inches right at the midline I wrote  
20 in my notes there (indicating) that it approximated a depth of  
21 about two inches and that the edges (indicating) of the injury  
22 were pointed.

23 Q. What does that mean?

24 A. Just that there wasn't a blunted edge on the knife.

25 MR. ROSENFELD: Indicating the witness has

E-ljb

People - DR. CAROLYN KAPPEN - direct

1560

1 pointed, again, to the right side and again pointed to the  
2 various areas on the diagram of the face as she has been  
3 speaking so I won't note them separately.

4 THE COURT: So indicated.

5 Q. Please continue, that's the one you observed. After  
6 that?

7 A. On this diagram I marked it L, that's for left because  
8 he is showing the left side of the face and here you see I made  
9 like a dark mark (indicating) in through the ear lobe. There  
10 was a three-quarter inch vertical stab wound in the lower aspect  
11 of the left ear lobe. It transected the ear lobe completely.  
12 This stab wound I measured five-and a-half inches below the top  
13 of the head and it was, approximately, three-and a-half inches  
14 left of the midline behind the ear. You see this little X here  
15 (indicating) this was a-half inch X that was behind the left ear  
16 lobe because the knife when it went through the ear lobe --

17 MR. CANTOR: Judge, I keep -- I am going to  
18 object to the word knife, can we use the word instrument?

19 THE COURT: I will allow her to testify the best  
20 way.

21 MR. CANTOR: She does not know if it was a knife.

22 THE COURT: Your objection is overruled.

23 A. went through the ear lobe and made an X in the skin  
24 (indicating) as an incised wound behind it so that was in the  
25 left ear. Then on the left side of the neck, that's this

E-ljb



People - DR. CAROLYN KAPPEN - direct

1561

1 (indicating) that I tried to draw in here which was eight inches  
2 below the top of the head and three inches on the left side of  
3 the neck, this (indicating) was the lethal stab wound, it was  
4 five eighths of an inch. This stab wound went into the  
5 musculature of the left side of the neck. It also injured the  
6 two major vessels in the left side of the neck, the carotid  
7 artery and the jugular vein. It also went in deep enough that  
8 it perforated the larynx, that's the tube you breathe with.  
9 There were stab wounds in the larynx near the vocal cords that  
10 was hemorrhaged, a lot of hemorrhage in the neck musculature and  
11 surrounding the left side of the larynx. I also saw that there  
12 was approximately 200 cc's of blood and blood clot in the  
13 stomach, which he swallowed into his stomach. There was a  
14 geographical distribution like a checkered sort of red and blue  
15 pattern of the lung because he was breathing the blood into his  
16 lungs and it is descriptively seen on the autopsy. This stab  
17 wound on the left side of (indicating) the neck went in  
18 approximately three inches and the direction of this stab wound  
19 was left to right and downward. So, that's one, two, three,  
20 four (indicating) is on the right side of the nose. It was a  
21 one-and a-quarter inch by one-and a-quarter inch irregular  
22 jagged T-shaped stab wounds of the right side of the nose and  
23 upper lip. This stab wound (indicating) was six inches below  
24 the decedent top of his head and it was approximately in the  
25 midline of his nose (indicating) and it extended to one inch

E-ljb

People - DR. CAROLYN KAPPEN - direct

1562

1 right of the midline. This stab wound (indicating) went in  
2 approximately three inches and it had a front to back and left  
3 to right direction. So those are the four stab wounds on the  
4 right, left and front of his face and then the only one is the  
5 one on the back of the head that I didn't describe.

6 Q. Okay. We will get to that in a moment, thank you.

7 Doctor, you used the word hemorrhage. Can you please  
8 explain what hemorrhage is?

9 A. Sure. When an injury -- a traumatic injury occurs  
10 blood vessels are injured and blood leaves the vasculature, it  
11 leaves the blood vessels, the arteries and veins, it goes into  
12 the soft tissue that's hemorrhage.

13 Q. Okay. What is the exsanguination?

14 A. Exsanguination is when the body bleeds externally  
15 and/or internally due to usually a traumatic injury.

16 Q. And was there evidence of internal exsanguination in  
17 this case?

18 A. Sure, the internal exsanguination you can see or I saw  
19 at the autopsy there was hemorrhaged in the left side of the  
20 neck corresponding to this (indicating) lethal stab wound and  
21 there was also blood in the stomach. So he was bleeding  
22 internally into his stomach. There was blood in the lungs, he  
23 bled into his lungs and there was also evidence of external  
24 exsanguination because there is blood on the clothing from the  
25 scene photos that the medical legal investigator took. I could

E-ljb

People - DR. CAROLYN KAPPEN - direct

1563

1 see blood was sprayed and dripping down the walls, the table, a  
2 chair, a couch and all over the floor.

3 Q. what would cause the blood to be shot out from the  
4 body, my word so-to-speak, causing this exsanguination?

5 A. I mean the blood especially when a major vessels are  
6 hit, in this case the jugular vein was hit, that would allow a  
7 lot of blood to come out externally and, you know, internally  
8 and also then when a major artery in the carotid arteries. On  
9 both sides (indicating) of the neck are major arteries, when  
10 they're injured blood will actually spray out.

11 Q. Okay. And these were injured in this case?

12 A. Yes.

13 MR. ROSENFELD: Indicating, your Honor, as the  
14 witness has been speaking I have not stopped to show where  
15 she is pointing. She has been pointing to the area, she is  
16 describing on her neck as she described those arteries and  
17 the jugular vein.

18 THE COURT: So indicated.

19 Q. All right. Doctor, let's -- first of all, you've  
20 indicated there has been four injuries you described here and  
21 the fifth was the back of the head, correct?

22 A. Correct.

23 Q. You used the word knife before, are these injuries  
24 consistent with a knife or similar instrument?

25 A. well, with a knife, yes.

E-1jb

People - DR. CAROLYN KAPPEN - direct

1564

1 Q. Okay. why are these injuries consistent with a knife?

2 A. Well, first of all, they're stab wounds by definition.  
3 They go in deeper into the skin and into the body than they are  
4 on the surface of the skin, that's a forensic definition and  
5 then they're ragged in a sense, but for the most part they're  
6 straight, they've got pointed edges, that's very consistent with  
7 a knife not a jagged bottle, that would look very different.  
8 Not an ice pick that would look very different.

9 Q. And, again, in talking about these five injuries is  
10 there anyway for you to determine the order of these injuries as  
11 they occurred to the deceased?

12 A. No.

13 Q. And why is that?

14 A. I wasn't there, I didn't see it and, you know, some of  
15 them -- well, the lethal one, you know, caused his death, that's  
16 all I can say, but I can't say which in the five that he  
17 received, where that was in that order.

18 Q. All right. I am going to show you what has been  
19 marked People's Exhibit 17B. Looking at People's Exhibit 17B  
20 can you please indicate what we're looking at?

21 A. Sure, that's the stab wounds that I described on the  
22 right side of the nose.

23 Q. Okay. And the nature and extent of the stab wounds if  
24 you could stand up and get chores and point out?

25 A. Sure.

E-ljb

People - DR. CAROLYN KAPPEN - direct

1565

1 Q. Where it goes from?

2 A. This stab wounds goes across here (indicating). There  
3 is a little tail, which is just on the surface of the nose. It  
4 goes through the nose and it goes through this upper lip and you  
5 can see the mustache here (indicating).

6 Q. And People's Exhibit 17A please indicate what we are  
7 looking at?

8 MR. CANTOR: That is not 17A, Judge.

9 MR. ROSENFELD: Seventeen-A.

10 MR. CANTOR: Is the M.E. sketch.

11 THE COURT: Seventeen was the sketch.

12 MR. CANTOR: Seventeen-A is the doctor's sketch.

13 THE COURT: All right. Let's clarify.

14 MR. ROSENFELD: Seventeen is the sketch.

15 THE COURT: That's what I thought.

16 MR. ROSENFELD: Seventeen-A is being published

17 now.

18 THE COURT: Very good.

19 MR. ROSENFELD: And before that I published 17-B.

20 THE COURT: You may continue with that.

21 A. So this (indicating) is the same stab wound that we  
22 saw to the right side of the nose in the previous photo, but I,  
23 of course, have to pull it apart to examine it to get a  
24 measurement of it, to get a depth of it and that's what I was  
25 looking at. It's really just in the soft tissue, it didn't hit

E-1jb

People - DR. CAROLYN KAPPEN - direct

1566

1 any major vessels. It wasn't included for the cause of death.

2 Q. And would that type of injury cause pain to an  
3 individual?

4 MR. CANTOR: Objection.

5 THE COURT: Overruled.

6 A. It would cause some pain and it would cause some  
7 bleeding, but not major bleeding.

8 Q. Thank you. All right. Doctor, thank you. You may  
9 stand, it may be easier. I am going to show People's Exhibit  
10 17C.

11 MR. ROSENFELD: May we approach a moment, your  
12 Honor, before I continue?

13 THE COURT: Surely.

14 (Whereupon there is an off-the-record  
15 discussion.)

16 THE COURT: Doctor, would you step off the stand?

17 THE WITNESS: Sure.

18 (Whereupon the witness exits the witness stand  
19 and there is an off-the-record discussion.)

20 THE COURT: Doctor, please.

21 (Whereupon the witness resumes the witness  
22 stand.)

23 Q. Again, so the two previous items were referred to as  
24 17A and 17B in evidence. I am now going to show People's  
25 Exhibit 17C in evidence. Please indicate, Doctor, what we're

E-ljb

People - DR. CAROLYN KAPPEN - direct

1567

1 looking at in this photograph?

2 A. We're looking at the decedent's, this is the left side  
3 of his head (indicating) as you can orient yourself. Here is  
4 his left ear (indicating), here is the stab wounds (indicating)  
5 I described going through his left ear lobe and here is the  
6 (indicating) lethal stab wound with a tail, a one inch tail on  
7 it, that's on the left side of the neck. This is the stab wound  
8 (indicating) that hit the jugular vein, the carotid artery and  
9 caused the internal hemorrhage and is the cause of death.

10 Q. The injury to the ear, Doctor, specifically what  
11 happened to the ear in this injury?

12 A. It perforated the ear completely and you can't see in  
13 this picture, but behind the ear there is an incised wound on  
14 the scalp like behind the ear where the knife actually hit.

15 MR. CANTOR: Judge, I keep on objecting to the  
16 word knife. She was not there, it could have been any  
17 sharp instrument.

18 THE COURT: The Court will note your continuing  
19 objection.

20 Q. Well, let's look specifically at People's Exhibit 17E  
21 in evidence. Go ahead, Doctor.

22 A. So here is the close up (indicating) of the ear and  
23 how it was cleanly --

24 MR. CANTOR: Is this D or E?

25 MR. ROSENFELD: I just stated what it was, I said

E-1jb

People - DR. CAROLYN KAPPEN - direct

1568

1 E.

2 Q. Go ahead.

3 A. Clearly transected and then you can see a little bit  
4 of the wound behind the ear, but not clearly that it made when  
5 it went through the ear onto the scalp.

6 MR. ROSENFELD: And, again, the witness has  
7 pointed to the right side of the ear in the right side of  
8 the photograph?

9 THE COURT: So indicated.

10 Q. Now, publishing People's Exhibit 17D in evidence.  
11 Please indicate what we are looking at here.

12 A. And that's sort of sideways, this label (indicating)  
13 should be straight.

14 Q. I'm sorry --

15 MR. CANTOR: I can't hear that, I am sorry.

16 MR. ROSENFELD: She asked me to turn the  
17 photograph around.

18 MR. CANTOR: I would like the witness to keep her  
19 voice up, I would like my client to hear. Would you have  
20 the reporter to read it back or the witness repeat it?

21 THE COURT: Read back the last question and  
22 answer.

23 (whereupon the last question and answer were read  
24 back by the reporter.)

25 MR. ROSENFELD: May I continue?

E-ljb



People - DR. CAROLYN KAPPEN - direct

1569

1 THE COURT: Yes, sir.

2 Q. Again, looking at People's 17D, I have straighten it  
3 out, go ahead, Doctor.

4 A. This is a close up of the stab wounds on the left side  
5 of the neck. This was the stab wound that perforated or injured  
6 the carotid artery, jugular vein and caused a lot of hemorrhage  
7 in the left side of the neck and the bleeding.

8 Q. This is 17F in evidence. Please indicate what we are  
9 looking at.

10 A. This is the right side of the face and you can see the  
11 right ear. This is the jaw line and this is the stab wound that  
12 was on the right side of the face) (indicating) in the jaw line,  
13 just a little bit in front of the ear, but in a jawline. This  
14 stab wound caused some perforation of vessels, but I didn't  
15 include it in the cause of death.

16 Q. Going back to the injuries to the ear would that type  
17 of an injury to an individual cause pain?

18 A. Yes.

19 Q. would it cause bleeding?

20 A. Yes.

21 Q. How about the injury to the neck would that cause  
22 pain?

23 A. Yes.

24 Q. And this injury that we're looking at here in People's  
25 Exhibit 17F would that cause pain to an individual?

E-ljb

People - DR. CAROLYN KAPPEN - direct

1570

1 A. Sure, nerves are sensitive and they were injured.

2 Q. Okay. Doctor, you indicated there was injury to the  
3 back of the head?

4 A. Correct.

5 Q. I ask you to look at People's Exhibit 17G in evidence.  
6 If you would 17G demonstrate what you were referring to?

7 A. Sure, this is the back of his head. Of course, here  
8 is the nape of his neck. Here is the stab wound on the back of  
9 his neck. This stab wound went in approximately two inches and  
10 you can see there is a little less hair here, I shaved that away  
11 so that we could see the injury clearly. This stab wound has a  
12 little defect on the edge of it. Also, there are contusions,  
13 you can see the red areas of the contusions in the scalp and  
14 there were three of them.

15 Q. Please ex --

16 MR. CANTOR: And this was what?

17 THE WITNESS: There were three of them.

18 Q. Please explain what you mean by contusions?

19 A. A contusion is a red area, it's a bruise, its from  
20 blunt impact, it's not from a sharp injury.

21 Q. Would that type of injury be consistent with an  
22 individual hitting his head against a hard surface?

23 A. Yes, very much so.

24 Q. Could that injury also be consistent with somebody  
25 hitting that area with a closed fist?

E-1jb

People - DR. CAROLYN KAPPEN - direct

1571

1 A. Yes, very much so.

2 Q. And you say there were how many of those areas on his  
3 head?

4 THE WITNESS: Can I consult my notes?

5 THE COURT: By all means.

6 A. Just to make sure I don't miscount. I wrote that  
7 there were three, approximately, one-half inch contusions on the  
8 back of the head.

9 Q. Finally, Doctor, directing your attention to People's  
10 Exhibit 17H in evidence please explain what we are looking at in  
11 detail.

12 A. This is just the close up encloser of the stab wound  
13 to the back of the head (indicating) and you just see it closer  
14 and you can see I shaved the hair away just to get a good  
15 example of what it looked like to take measurements.

16 Q. You mentioned about a defect or tail, I believe, you  
17 referred to; what do you mean by that?

18 A. That's this here (indicating) because the stab wound,  
19 you know, can look a little -- it can look like just a simple  
20 stab on the skin surface and many of these wounds there is a  
21 little tail (indicating), that's when the tip of the blade just  
22 scrapes the surface of the skin because there is always motion,  
23 the person doing the action of the stabbing and the person  
24 that's getting stabbed can easily be in motion and that causes  
25 this little tear (indicating) to occur with the sharp

E-1jb

People - DR. CAROLYN KAPPEN - direct

1572

1 instrument.

2 Q. Thank you very much, Doctor, you can be seated.

3 A. Thank you.

4 Q. Doctor, from looking at the injuries to the deceased  
5 is it possible to tell what position he was in when those  
6 injuries were inflicted on him?

7 A. Well, at the time that he received the stab wound to  
8 his nose, you know, the direction of it helps somewhat  
9 approximate it since it's at the front of his body, that was the  
10 exposed area so there is somewhat you can state about the  
11 position of the body, but exactly what position, no.

12 Q. And why is it that you can't determine it from the  
13 injuries?

14 A. Because they're not specific enough and they never  
15 would be or people are moving continuously. Well, you would,  
16 you know, expect him to be, that he is standing and on his feet  
17 and he ends up on the ground.

18 Q. Doctor, could you please explain what toxicology is?

19 A. Sure, the toxicology is the chemical testing that we  
20 do on specimen that we obtain at the autopsy.

21 Q. And were specimen for the autopsy sent for forensic  
22 toxicology evaluations?

23 A. Yes, they were.

24 Q. And did you receive the results of that toxicology  
25 report?

E-1jb

People - DR. CAROLYN KAPPEN - direct

1573

1 A. Yes, I did.

2 Q. And would you please explain what ethanol is?

3 A. Ethanol is alcohol.

4 Q. And in terms of forensic toxicology reports how is  
5 that characterized in terms of whether it is in the blood, the  
6 human urine and the vitreous humor?

7 A. We test various specimen at the autopsy. In this case  
8 the blood was tested and we have a pretty good idea from  
9 laboratory data what values should be of ethanol in the blood or  
10 shouldn't be. Urine was also tested just to confirm because  
11 this case might be in court it has to be confirmed in other  
12 specimen and by different methodologies. So it's tested in  
13 urine and it's tested in vitreous, which is the blood in the  
14 eye. The only value we really look at with ethanol or alcohol  
15 is the blood ethanol or alcohol level.

16 Q. Why is that?

17 A. Because urine you don't always excrete out all of the  
18 urine at a single void so that's not really accurate for  
19 quantifying any value of any drug.

20 (Continues next page.)

21

22

23

24

25

E-1jb

Jo-f

**DR. KAPPEN-PEOPLE-DIRECT**

1 Q. And what's the vitreous humor, and why wouldn't you do  
2 that?

3 A. The vitreous, you can use that in a sense, the value.  
4 And vitreous is usually higher because alcohol distributes more  
5 in water, and there is more water in the vitreous fluid than  
6 there is in the blood.

7 Q. So in terms of the toxicology report for George  
8 Talarvera what is the ethanol level that was reported?

9 A. The ethanol level reported in his blood was .27 grams  
10 percent.

11 Q. Could you please explain what that means in lay  
12 person's term?

13 A. Sure. I don't know if you mean a generalization. The  
14 legal limit to drive in New York State is .08. His is .27. So  
15 it's more than three times the legal limit or legal limit to  
16 drive just to give you an idea. He was drinking.

17 Q. Is it possible to tell from that number how much he was  
18 drinking before his death?

19 A. Not exactly, no.

20 Q. And what are cannabinoids?

21 A. The cannabinoids is marijuana or pot.

22 Q. And according to the forensic toxicology report was  
23 there any results of that in the examination?

24 A. Yes. The cannabinoids were detected in his blood.  
25 They detected it and confirmed it in the urine as well.

Jo-I

DR. KAPPEN-PEOPLE-DIRECT

1 Q. What does that mean detected as oppose to having a  
2 specific number or so?

3 A. Well, we never quantify cannabinoids for many reasons.  
4 One is because it's usually insignificant in a cause of death.  
5 You can't overdose on marijuana. We just want to have this  
6 there for completeness to show everything that we found. So  
7 it's deemed detected in the blood and detected -- it was  
8 confirmed in the urine.

9 Q. Again, by saying detected that's not indicating any  
10 type of amount is it?

11 A. None whatsoever nor can anyone state when it was used.

12 Q. Okay. So, again, following that can you state or  
13 anybody state whether it was ingested or taken immediately  
14 before his death, hours, days, weeks, month? What can you  
15 determine, if anything?

16 A. Well, the half-life for marijuana or cannabinoids  
17 varies very, very much with a frequent user and a person who  
18 doesn't use it frequently. So you have to know which category  
19 the person falls into. And the half-life is very long, up to  
20 two weeks in the body. So I can't say if he used it, you know,  
21 minutes before he was stabbed, hours before. It could even be  
22 probably up to days before.

23 Q. Now, regarding the ethanol .27, a number, is it  
24 possible to determine from having that result the effects it  
25 would have had on George Talarvera immediately before his death?

jo-f

DR. KAPPEN-PEOPLE-DIRECT

1 A. I mean, generally, you know, we know that ethanol or  
2 alcohol is a depressant. It's sedating. It can be calming. I  
3 can't say exactly what it was doing to him at that point in  
4 time.

5 Q. Would it in any way -- could you determine just by  
6 having that number or know whether or not it affected his  
7 judgment?

8 MR. CANTOR: Objection.

9 THE COURT: You can pose that as a hypothetical.

10 Q. Yes, would it be possible to determine whether or not  
11 having that much ethanol in his blood would have affected George  
12 Talarvera's ability to -- let me withdrawn. Let me rephrase the  
13 question.

14 Can you determine by looking at that number the effect  
15 that this alcohol level would have on his coordination ability?

16 A. Generally speaking we know --

17 MR. CANTOR: Well, Judge, I am going to object to  
18 generalization. We are dealing with this case. I object.

19 THE COURT: I would allow it as a hypothetical.

20 A. Generally speaking, and that's why there is a legal  
21 limit for it. If your blood is above .08 your reaction time are  
22 slowed, and that's when you are not suppose to drive, operate  
23 machinery and things like that. So it affects it adversely.

24 Q. Doctor, can you state within a reasonable degree of  
25 medical certainty what caused the death of George Talarvera?



to-f

DR. KAPPEN-PEOPLE-CROSS

1 A. Yes, I definitely can. The stab wound of the neck with  
2 the injury to the jugular vein and the carotid artery and the  
3 larynx is what caused his death.

4 MR. ROSENFIELD: Thank you. I have no further  
5 questions.

6 THE COURT: Thank you. Mr. Cantor.

7 CROSS-EXAMINATION BY

8 MR. CANTOR:

9 Q. Doctor, in connection with the death of this gentleman  
10 were you ever in apartment 3D up on McGraw Avenue where the  
11 police found the body here in the Bronx?

12 A. Of course not.

13 Q. But yet you testified there will be blood on the floor  
14 and wall, you recall making that testimony?

15 A. Yes, I did.

16 Q. You never saw the floor or the walls of apartment 3D,  
17 did you?

18 A. I saw many pictures of the floor, of the walls and the  
19 couch.

20 Q. Were you there? Consider what was the question.

21 A. I already told you, I wasn't there.

22 Q. Well, answer -- okay. Therefore, you personally never  
23 viewed with your eyes the walls or the floor personally?

24 A. I viewed photos personally.

25 Q. Va'am, did you hear the word photo in the question?

jc-f

**DR. KAPPEN-PEOPLE-CROSS**

1 A. On the wall and floor.

2 Q. Were you ever there? You were not there? You have  
3 already told us twice, correct?

4 MR. ROSENFELD: Objection, your Honor, asked and  
5 answered.

6 Q. Why turn to the Judge, Madam?

7 THE WITNESS: He is harassing.

8 MR. ROSENFELD: Objection.

9 MR. CANTOR: Why is she turning to your Honor for  
10 guidance?

11 THE COURT: No.

12 MR. ROSENFELD: Objection, your Honor. This is  
13 improper.

14 THE COURT: She wants to know if she can be  
15 responsive. ... will allow it to be responsive.

16 Q. Thank you. Can you turn back to me now?

17 MR. ROSENFELD: Is the objection sustained or  
18 overruled?

19 THE COURT: Your objection?

20 MR. ROSENFELD: Yes.

21 THE COURT: It's sustained.

22 MR. ROSENFELD: Oh, thank you.

23 Q. So what you say as blood that was by virtue of you not  
24 viewing the scene, but by you viewing the photographs, correct?

25 A. That is true.

jo-1

DR. KAPPEN-PEOPLE-CROSS

1 Q. How many photographs did you view?

2 A. More than 20.

3 Q. And when did you view them?

4 A. Lastly today.

5 Q. I am sorry?

6 A. Lastly today.

7 Q. Lastly today. And when for the first time?

8 A. On December 23, 2009.

9 Q. And in the interim did you view them?

10 A. Yes.

11 Q. When?

12 A. The date that I finalized the autopsy report and  
13 probably the date that I was working on --

14 Q. I am not interested in probability.

15 MR. ROSENFELD: Objection.

16 Q. I am interested in the date that you finalized the ME's  
17 report. What date would that be?

18 A. It was January 12, 2010.

19 Q. Do you know any members of the jury, Doctor?

20 MR. ROSENFELD: Objection, your Honor. This is  
21 improper.

22 THE COURT: Sustained.

23 MR. ROSENFELD: Irrelevant.

24 MR. CANNON: She keeps on peering over to the  
25 jury.

jo-f

**DR. KAPPEN-PEOPLE-CROSS**

1 MR. ROSENFELD: This is improper.

2 MR. CANTOR: And my client is having difficulties  
3 in hearing.

4 THE COURT: Please, please. Perfectly all right  
5 for her to address the jury. They are the final determinist.

6 MR. CANTOR: Sure. Let us pander to the jury.

7 MR. ROSENFELD: Objection. Your Honor. He is  
8 commenting --

9 THE COURT: Totally, totally outrageous I should  
10 say.

11 MR. CANTOR: Can my client hear? Can my client  
12 hear?

13 THE COURT: I told him a long time ago if he had  
14 any difficulties any time to raise his hand. I have not seen  
15 him raise his hand once.

16 MR. CANTOR: There he goes.

17 THE COURT: All right, now.

18 MR. CANTOR: Now, he raised it. Would you direct  
19 the witness to at least speak to everyone in the courtroom.

20 MR. ROSENFELD: Objection to this colloquy again.

21 THE COURT: Your objection is sustained.

22 Please continue, Mr. Cantor.

23 Q. Now, the wounds, five in number, would they be  
24 consistent with the utilization of any sharp implement?

25 A. No.

jo-f

DR. KAPPEN-PEOPLE-CROSS

1 Q. No. Would a carpet cutter -- you would acknowledge  
2 that a carpet cutter is a sharp implement, is it not?

3 A. It is a sharp instrument.

4 Q. And is it or are the wounds that you detected on the  
5 body of the deceased consistent with utilizing a carpet cutter?

6 A. Well, I am not definitely sure what carpet cutter you  
7 are looking like. How long is the blade?

8 Q. A carpet cutter. Let's talk about any sharp  
9 instrument, for instance, approximately four to five inches in  
10 length by its blade, okay.

11 A. That's fine.

12 Q. Now, there are such instruments that are four or five  
13 inches in length that are used exclusively to cut carpets, are  
14 you aware of that?

15 A. Some of them.

16 Q. Okay. The wounds you saw are they consistent with the  
17 infliction of a carpet cutter on the areas that you've  
18 described, a sharp carpet cutter?

19 A. And this carpet cutter you are saying --

20 Q. I already said it once.

21 MR. ROSENFELD: Your Honor, the witness is trying  
22 to be sure of the answer.

23 MR. CANTOR: Why does she constantly turn to you?

24 MR. ROSENFELD: Because I am objecting.

25 MR. CANTOR: Is that for comfort? For support?

joe-f

DR. KAPPEN-PEOPLE-CROSS

1 THE COURT: Firstly, you may sit down.

2 MR. ROSENFELD: Thank you.

3 THE COURT: Secondly, your objection is sustained.

4 MR. ROSENFELD: Thank you.

5 THE COURT: Thirdly, Mr. Cantor, please treat the  
6 witness with the respect that every person deserves.

7 MR. CANTOR: Certainly, Judge. Somehow my client  
8 who is on trial for murder --

9 THE COURT: There is no doubt about that.

10 Q. Is there a reason, reason why you turned to the Judge  
11 three or four times, Doctor?

12 A. Yes.

13 MR. ROSENFELD: Objection, your Honor. Again --

14 THE COURT: The objection is sustained. You don't  
15 have to answer it.

16 Q. Okay. So we have a sharp carpet cutter used  
17 exclusively for cutting carpets. For the third time I will tell  
18 you a blade of approximately four to five inches, is that an  
19 instrument that's consistent with the inflictions of wounds that  
20 you've described, yes or no?

21 A. I would need to see what you were describing.

22 Q. On, you never seen a carpet cutter in your life?

23 MR. ROSENFELD: Objection.

24 THE COURT: Sustained.

25 Q. Have you ever seen a carpet cutter in your life?

jo-f

## DR. KAPPEN-PEOPLE-CROSS

1 A. Not recently.

2 Q. I am not asking you recently. Have you ever?

3 A. I have seen one instrument that I knew the person used  
4 to cut carpet, and it's not anything like what you are  
5 describing.

6 Q. Well, can we say barbecue screw, a thin barbecue screw  
7 which certainly is more than four or five inches in length, is  
8 that consistent with inflicting the wounds that you've  
9 described?

10 A. No.

11 Q. No. Can you think of any other implement other than a  
12 knife that would be consistent with the wounds that you've  
13 described the infliction thereof?

14 A. No.

15 Q. So you are not there at the time that wounds were  
16 inflicted, correct?

17 A. Of course not.

18 Q. And do you know what type of knife it was?

19 A. Nope.

20 Q. Do you know if it was a bowie knife, a penknife, a  
21 gravity knife, a switchblade knife?

22 A. No, no one could ever say.

23 Q. Do you know the thickness of the blade that was on that  
24 knife that you claimed is consistent with the infliction of the  
25 wounds you've described?

jo-f

DR. KAPPEN-PEOPLE-CROSS

1 A. have an idea.

2 Q. You do have an idea as to the thickness of the blade?

3 A. I did just say that.

4 Q. Okay. And is that idea within a reasonable degree of  
5 medical certainty?

6 A. Yes, it is.

7 Q. Okay. And how about the length. Can you tell us, just  
8 yes or no, with a reasonable degree of medical certainty the  
9 length of the knife that you claim?

10 A. No, no one could.

11 Q. I am asking you. You are the only one on the witness  
12 stand, and you aren't --

13 MR. ROSENFELD: Objection, your Honor.

14 Q. Don't turn to the Judge, again.

15 A. I'll wait for him to give his answer.

16 MR. ROSENFELD: Your Honor, I am objecting.

17 Turning to see if the Court will sustain or overrule.

18 THE COURT: Of course. She's waiting as the Court  
19 directed. She's doing exactly what she should be doing.

20 MR. ROSENFELD: Thank you.

21 THE COURT: For the Court to rule, Mr. Cantor.

22 MR. CANTOR: Well, everyone can hear when you're  
23 ruling, your Honor.

24 THE COURT: On the contrary, she is showing  
25 courtesy to the Court. Now, please continue.



jo-1

**DR. KAPPEN-PEOPLE-CROSS**

1 Q. Now, can you tell us the length?

2 A. No.

3 Q. You have a reasonable degree of medical certainty as to  
4 the length of it?

5 A. Exactly no.

6 Q. So you don't know whether it was a pocketknife, a bowie  
7 knife, a gravity knife, a switchblade knife, a cub scout knife,  
8 a boy's scout knife, any one of the panoply of hundreds of  
9 knives that exist; is that a correct statement?

10 A. It could be many of those knives that you just  
11 mentioned.

12 Q. And you don't know?

13 A. No one would know.

14 Q. I am asking you. Do you see anyone else on the witness  
15 stand?

16 MR. ROSENFELD: Objection to form.

17 THE COURT: Yes, sustained.

18 Q. Okay. You understand you are the only witness being  
19 questioned presently, do you not?

20 MR. ROSENFELD: Objection. That's a totally  
21 ridiculous question, Judge.

22 THE COURT: That's an unnecessary question.

23 Please move on.

24 Q. Well, there are instruments other than knives that have  
25 sharp ends or blades, would you admit that, Doctor?

jo-f

DR. KAPPEN-PEOPLE-CROSS

1 A. That have sharp ends, yes.

2 Q. And you cannot tell us within a reasonable degree of  
3 medical certainty that it was a knife that inflicted these  
4 wounds that you described rather than any other instrument that  
5 had sharp and lengthy configurations?

6 A. I can state that.

7 Q. Oh, it was definitely a knife?

8 A. These are due to a knife. I said before --

9 Q. Ma'am, if you said it once, you said it again.

10 MR. ROSENFIELD: Your Honor, he is interrupting.

11 Q. Ma'am, you already said it.

12 THE COURT: Allow her to complete her answer.

13 MR. CANTOR: Sure.

14 Q. And you are not there --

15 MR. ROSENFELD: Wait, wait. She didn't complete  
16 her answer.

17 THE COURT: One second. You asked a previous  
18 question. Are you going --

19 MR. CANTOR: I will withdraw it, sure.

20 THE COURT: All right. Withdrawn. Very good.

21 Q. Sure. But you don't know the type of knife?

22 A. I did say that.

23 Q. And there is no other instrument, based upon your 15  
24 years, 15 years of experience as a medical examiner, no other  
25 implement or instrument other than a knife that could be

jo-<sup>e</sup>

DR. KAPPEN-PEOPLE-CROSS

1 responsible for the wounds that you described; is that correct?

2 A. That is true.

3 Q. How about a sword, would that be consistent with the  
4 infliction of the wounds that you described?

5 A. What kind of a sword?

6 Q. Any kind of a sword, the whole panoply?

7 A. You can get --

8 Q. The whole panoply of swords that exist in this world,  
9 would these wounds be consistent with infliction by way of a  
10 sword?

11 MR. ROSENFELD: Objection.

12 THE COURT: Overruled.

13 A. The injuries are not consistent with a sword.

14 Q. Of that you are certain?

15 A. Yes.

16 Q. Of that you are sure?

17 A. Yes, that's my opinion.

18 Q. That's your opinion. And of course you weren't there  
19 at the time of the infliction of the wounds?

20 MR. ROSENFELD: Objection, your Honor. This is  
21 just --

22 THE COURT: Yes.

23 MR. ROSENFELD: -- adding on by the defense.

24 Unnecessary.

25 THE COURT: The objection is sustained.

Go-F

DR. KAPPEN-PEOPLE-CROSS

1 Q. How about a dagger. Do you know the difference between  
2 a dagger and a knife, ma'am?

3 A. Yes.

4 Q. Would a dagger be consistent with the inflictions of  
5 the wounds that you described?

6 A. A dagger that I have seen --

7 Q. I am not interested in what you have seen. I am  
8 interested in the whole panoply of daggers that exist in this  
9 world. Would any one of these daggers be consistent with the  
10 inflictions of wounds that you described?

11 MR. ROSENFELD: Objection.

12 THE COURT: Overruled.

13 A. Well --

14 Q. Yes or no, ma'am?

15 MR. ROSENFELD: Your Honor, the witness started  
16 answering and he interrupted.

17 Q. Yes or no?

18 A. Could you repeat the question.

19 Q. Yeah. Would a dagger be consistent with the wounds  
20 that you described, and I am referring to every dagger that you  
21 have ever seen in a picture, in a magazine, in a movie, that  
22 you've read about. Any dagger. Are they consistent with the  
23 infliction of the wounds that you described?

24 MR. ROSENFELD: Objection.

25 MR. CANTOR: You've already ruled on it. It's

10-5

## DR. KAPPEN-PEOPLE-CROSS

1 overruled.

2 Q. You may answer. You may answer, ma'am.

3 A. There is a possibility.

4 Q. So aside from a knife it could have be inflicted by a  
5 dagger? Could have been inflicted by a dagger, yes or no?

6 A. It's a very slightly possibility.

7 Q. There is a possibility?

8 A. Very slight one.

9 Q. And there is a slight possibility that they were  
10 inflicted by a knife, correct?

11 A. More of a probability.

12 Q. More of a probability?

13 A. That it was a knife.

14 Q. But of course you are giving us your opinion since you  
15 weren't there, correct?

16 MR. ROSENFELD: Objection, your Honor. Asked and  
17 answered again.

18 MR. CANTOR: This is cross. I get to do that.

19 THE COURT: No need to editorialize. What you  
20 need to do is wait for a determination. Objection is  
21 overruled.

22 Q. Okay. Answer the question.

23 A. No, I wasn't there.

24 Q. You were sleeping preparing to perform the autopsy the  
25 next day, correct?

jc-f

DR. KAPPEN-PEOPLE-CROSS

1 A. That is correct.

2 Q. Sorry?

3 A. That is correct.

4 Q. How many tattoos, professional tattoos did you notice  
5 on the body of the deceased?

6 A. Three.

7 Q. Did you notice an unprofessional tattoos?

8 A. Yes, I did.

9 Q. Now, have you ever performed autopsies of inmates at  
10 correctional -- not that the autopsy was done at the  
11 correctional facilities -- but of inmates who expired at  
12 correctional facilities under questionable circumstances? Have  
13 you ever autopsied such?

14 MR. ROSENFELD: Objection.

15 THE COURT: Sustained.

16 Q. Have you ever autopsied people who have had  
17 unprofessional tattoos on their bodies?

18 A. Yes, I have.

19 Q. Have you ever autopsied an inmate, someone who hasn't  
20 -- was incarcerated at the time of his or her death?

21 MR. ROSENFELD: Objection.

22 THE COURT: Sustained.

23 Q. Do you know what a prison tattoos is?

24 MR. ROSENFELD: Objection.

25 THE COURT: Sustained.

jo-f

DR. KAPPEN-PEOPLE-CROSS

1 Q. Have you ever run across in your professional career  
2 either in person or pictures of tattoos on the bodies of  
3 inmates?

4 MR. ROSENFELD: Objection.

5 THE COURT: Sustained.

6 Q. But the fourth tattoo was a nonprofessional one?

7 A. That's true.

8 Q. And have you ever heard the expression jailhouse  
9 tattoo?

10 MR. ROSENFELD: Objection.

11 THE COURT: Sustained.

12 Q. Well, let's go to the urine. There was a urine  
13 analysis of the ethanol or alcohol, was there not?

14 A. There was.

15 Q. And the urine analysis yielded a finding of 0.39 of one  
16 percent of alcohol or ethanol as you called it in the urine,  
17 correct?

18 A. No, that's not stated properly.

19 Q. Well, what is 0.39 next to ethanol?

20 A. Grams percent. Not one percent as you said.

21 Q. I am not asking about one percent. I said oh point, oh  
22 decimal 39 percent?

23 A. Grams percent is what you are leaving out.

24 Q. All right. About the oh -- no. 0.39 grams percent of  
25 alcohol by way of urine testing?

je-f

DR. KAPPEN-PEOPLE-CROSS

1 A. In the urine, correct.

2 Q. Okay. And if that is accurate -- and do you have any  
3 reason to doubt the accuracy of the forensic toxicology  
4 laboratory report?

5 A. Nope.

6 Q. That would be almost five times the legal limit for  
7 driving while intoxicated, correct?

8 A. No.

9 Q. Wouldn't be?

10 A. It would not be. That's urine. When we talk about  
11 driving while intoxicated you can only compare it to the blood  
12 alcohol not urine alcohol.

13 Q. But I am asking you, the 0.39, which you said you have  
14 no reason to doubt as being accurate, that is almost eight times  
15 greater than 0.08; is that correct just mathematically?

16 A. Mathematically --

17 Q. Yes or no, madam.

18 A. Mathematically it is correct.

19 Q. Then you've answer my question.

20 A. You are comparing apples to oranges.

21 Q. You have answered my question.

22 MR. CANTOR: Your Honor --

23 MR. ROSENFELD: Objection. Badgering the witness.

24 MR. CANTOR: The only question --

25 MR. ROSENFELD: She's trying to answer



to-f

DR. KAPPEN-PEOPLE-CROSS

1 professionally.

2 MR. CANTOR: No, that's the only question.

3 THE COURT: All right. That is the only question.

4 Q. Okay. Now, the medical examiner's office, there is a  
5 chief medical examiner, correct?

6 A. That is true.

7 Q. And who serve -- what is the title of the man or woman  
8 who serves directly under the chief medical examiner?

9 A. There are many of them. They are called deputy chief  
10 medical examiner.

11 Q. Are you a deputy or were you at the time you performed  
12 this autopsy a deputy chief medical examiner?

13 A. No.

14 Q. What is the rank below deputy chief medical examiner?

15 A. City medical examiner.

16 Q. City?

17 A. Correct.

18 Q. And were you a city medical examiner at that time?

19 A. That's correct, and I still am.

20 Q. Ma'am, you have answered the question by saying  
21 correct. And as of the time that you had performed this autopsy  
22 how long had you worked as a pathologist for the Office of the  
23 Chief Medical Examiner?

24 A. Twelve years and a half.

25 Q. And when you entered the medical examiner's office, 12

50-1

DR. KAPPEN-PEOPLE-CROSS

1 and a half years prior to that, did you enter it at the rank of  
2 city medical examiner?

3 A. Yes, I did.

4 Q. And when you conducted this autopsy, 12 and a half  
5 years later, you remained at the same rank; is that correct?

6 A. That is true.

7 Q. A medical legal investigator positions?

8 A. I don't understand what you are asking.

9 Q. What word in the question don't you understand?

10 A. There 's no verb.

11 Q. You testified about medical legal investigation  
12 investigator, correct, employed by your office?

13 A. That is true.

14 Q. Are they licensed physicians?

15 A. No.

16 Q. The one unprofessional tattoo that you noted on the  
17 body of the deceased, would it be your expert opinion that that  
18 was applied by a non-tattooed artist?

19 A. Very possible.

20 Q. It's your opinion, correct?

21 A. That is correct.

22 Q. If you know, since you are a forensic pathologist,  
23 whether or not there exist, within detention facilities, people  
24 who are capable of applying a nonprofessional tattoo?

25 MR. ROSENFELD: Objection.

jo-1

DR. KAPPEN-PEOPLE-CROSS

1 THE COURT: Sustained.

2 Q. You don't know how the deceased came to receive or the  
3 circumstances attending to his receiving that nonprofessional  
4 tattoo, correct?

5 A. That's true.

6 Q. Now, you said that the Office of the Chief Medical  
7 Examiner is an independent agency, correct?

8 A. From other hospitals in the City of New York, correct.

9 Q. And independent from the New York City Police  
10 Department?

11 A. That too.

12 Q. And you are an expert in forensic pathology, correct?

13 A. So the Court deemed me.

14 Q. No. I am asking you. I am not asking about the Court.  
15 Are you an expert in forensic pathology?

16 MR. ROSENFELD: Objection.

17 THE COURT: Sustained. The Court has qualified  
18 her as such.

19 MR. CANTOR: You qualified her as such.

20 THE COURT: Based on her training and experience  
21 she was so qualified without objection I might note.

22 Q. Okay. Since you are a qualified expert in forensic  
23 pathology, how many times would you estimate in your career as  
24 an expert in forensic pathology you've testified for the  
25 prosecution? I want an approximation.

jo-f

## DR. KAPPEN-PEOPLE-CROSS

1 A. Approximately I've testified 133 times.

2 Q. In your career as an expert in forensic pathology have  
3 you ever testified for the defense?

4 A. Yes.

5 Q. How many times?

6 A. Probably five or less.

7 Q. So the overwhelming majority of the times that you've  
8 testified in family and supreme courts, in the various county of  
9 New York City, has been for the prosecution? Yes or no, ma'am?

10 A. It seems the defense doesn't ask me, so yes.

11 Q. Ma'am, I am asking you would that be a fact? Would  
12 that be an imperial fact?

13 A. Yes, it is. Yes, it is.

14 Q. And you've had occasion, have you not, to consult at  
15 your office or telephonically with prosecutor's concerning  
16 cases?

17 A. Yes, I have.

18 Q. On many occasions; is that correct?

19 A. Yes, it is.

20 Q. And in this case, either by the way of telephone or in  
21 person, how many times did you speak to Assistant District  
22 Attorney Rosenfeld concerning the subject matter of your  
23 testimony?

24 A. Probably a couple of times.

25 Q. When you say a couple, is that two, three, four; is

to-f

DR. KAPPEN-PEOPLE-CROSS

1 That what we are talking about?

2 A. A couple, two.

3 Q. About two. And did you see pictures on either one or  
4 both of those occasions?

5 A. Yes.

6 Q. The combination of the recent ingestion of cannabis,  
7 which is marijuana, and large amounts of alcohol would cause  
8 what in a person?

9 MR. ROSENFELD: Going to object to the form.

10 THE COURT: If she understands it she may respond  
11 to it.

12 A. I don't understand it. It's too many factors to take  
13 into considerations.

14 MR. CANTOR: I can't --

15 THE COURT: You may want --

16 MR. CANTOR: I can't hear one word when she turns  
17 to your Honor.

18 MR. ROSENFELD: Your Honor, just for the record --

19 MR. CANTOR: This is a public trial.

20 MR. ROSENFELD: I heard her perfectly.

21 MR. CANTOR: This is a public trial. I would like  
22 to have her speak publicly so my client and I can --

23 MR. ROSENFELD: Your Honor, I am about 15 to 20  
24 feet away. I heard every word perfectly.

25 Q. What were you saying to the Judge?

jo-f

**DR. KAPPEN-PEOPLE-CROSS**

1 THE COURT: Did all the jurors hear the answer?

2 THE JURORS: Yes.

3 THE COURT: Would you like it repeated?

4 MR. CANTOR: No. I would like to know from the  
5 witness who is like turning to you again.

6 THE COURT: So you're withdrawing the previous --

7 MR. CANTOR: No.

8 Q. What did you say to the Judge?

9 THE COURT: You must answer definitely. Do you  
10 wish to let that question stand or you wish --

11 MR. CANTOR: I wish to let it stand.

12 THE COURT: Fine.

13 Q. What did you say to the Judge?

14 MR. CANTOR: Again, she turns to you, Judge.

15 MR. ROSENFELD: Your Honor, every time she is  
16 waiting for the Court to say something --

17 MR. CANTOR: Again --

18 MR. ROSENFELD: -- he makes a comment on it.  
19 She's showing you respect and waiting for the Court to speak,  
20 that's all.

21 MR. CANTOR: This is a professional witness. She  
22 ought to know.

23 THE COURT: There are no conversations between the  
24 Court and this witness.

25 MR. CANTOR: The witness clearly said something to

jc-f

**DR. KAPPEN-PEOPLE-CROSS**

1 your Honor about 30 seconds ago.

2 THE COURT: Only before when she asked if she had  
3 to answer certain questions.

4 Q. What did you say to the Judge?

5 THE COURT: You mean now or before?

6 MR. CANTOR: About 15, 20 seconds ago.

7 Q. Please tell us. We are awaiting your answer?

8 A. I don't even remember at this point in time.

9 Q. Ah.

10 A. You would have to have it read back.

11 Q. You've answered the question. You don't remember.

12 A. You would have to ask to read back.

13 MR. ROSENFELD: Objection.

14 Q. I'll go on to my next question.

15 MR. ROSENFELD: Objection.

16 THE COURT: The objection is sustained.

17 Q. I'll go on to my next question. When you -- would you  
18 say you have a bad memory, ordinary memory or excellent memory?

19 MR. ROSENFELD: Objection.

20 THE COURT: Sustained.

21 Q. Well, once again, Madam, I pose the question to you,  
22 the recent ingestion, the taking, the smoking of marijuana  
23 combined with large amounts of consumption of alcohol at around  
24 the same time would cause what reaction in an ordinary human  
25 being?

10-7

DR. KAPPEN-PEOPLE-CROSS

1 MR. ROSENFELD: Objection.

2 THE COURT: Overruled.

3 Q. You can answer that.

4 A. As a hypothetical question?

5 Q. Yeah.

6 A. The two drugs together could have various effects, but  
7 generally it would relax the person, sedate them. The alcohol  
8 once again is an anti -- it's a depressant. It would depress  
9 the person.

10 Q. Would you -- would you change your answer -- would it  
11 cause you to change your answer that multiple lay witnesses  
12 testified that the deceased at or about the time of his death  
13 was very animated, very loud, gesticulating with his arms and  
14 moving about? Would that cause you to change your answer that  
15 the combination of pot and large amounts of alcohol would sedate  
16 and depress an individual? Would that cause you to change that  
17 response?

18 A. No, that could be.

19 Q. Ma'am, you said no and you've answer the question.

20 MR. ROSENFELD: Your Honor, he cut her off.

21 MR. CANTOR: No, it's a yes or no question.

22 THE COURT: It was a yes or no.

23 MR. CANTOR: Thank you, Judge.

24 Q. Have there been other occasions that you've testified  
25 for the prosecution when you've had occasion to turn to a Judge



jo-f

**DR. KAPPEN-PEOPLE-CROSS**

1 a half a dozen time or so?

2 MR. ROSENFELD: Objection, your Honor. Again, he  
3 makes light of the fact that she's waiting for the Court.

4 MR. CANTOR: I thought there was no colloquy.

5 THE COURT: There is no colloquy. The objection  
6 is sustained.

7 MR. CANTOR: The exception is respectfully noted.

8 THE COURT: For what is noted it will be accepted  
9 as jury can determine.

10 MR. CANTOR: Absolutely it's for the jury to  
11 determine bias and --

12 MR. ROSENFELD: Objection, your Honor. Colloquy,  
13 again. It's not a question to the witness.

14 MR. CANTOR: He is engaging -

15 THE COURT: Please, Mr. Cantor. Please. Just  
16 continue your question.

17 MR. CANTOR: Okay. Well, I withdraw it to close  
18 on cross-examination subject to your permission.

19 THE COURT: Thank you, Mr. Cantor.

20 Mr. Rosenfeld, do you have any re-direct for the  
21 lady?

22 MR. ROSENFELD: Sure.

23 THE COURT: Please.

24 REDIRECT EXAMINATION BY

25 MR. ROSENFELD:

to-f

**DR. KAPPEN-PEOPLE-REDIRECT**

1 Q. Doctor, Mr. Cantor asked you about testifying for the  
2 prosecution. How many times have you been asked to testify for  
3 the defense?

4 MR. CANTOR: Asked and answered. She said five or  
5 less.

6 THE COURT: I will allow it.

7 A. Five or less.

8 Q. That's how many times you've actually testified or how  
9 many times you were asked?

10 A. Both.

11 Q. Both?

12 A. They rarely ask me to come and testify for them.

13 Q. Why is that?

14 MR. CANTOR: Objection.

15 A. They don't like what I have to say.

16 MR. CANTOR: Judge, objection.

17 THE COURT: Objection is sustained.

18 MR. CANTOR: And would you instruct the witness  
19 not to answer until you've ruled. Would you kindly so  
20 instruct the witness.

21 THE COURT: That, of course, would cause her to  
22 look at me again. Is that --

23 MR. CANTOR: That's fine. Let her look at the  
24 lunar stars.

25 MR. ROSENFELD: Objection to colloquy.

jo-1

**DR. KAPPEN-PEOPLE-REDIRECT**

1 MR. CANTOR: As long as she knows it. As long as  
2 she knows it.

3 MR. ROSENFELD: Objection, your Honor.

4 THE COURT: Please go on again.

5 MR. CANTOR: She's testified too many times. She  
6 ought know it.

7 THE COURT: The objection is sustained.  
8 Sustained.

9 MR. ROSENFELD: Your Honor, I will ask you --

10 THE COURT: Please proceed.

11 MR. CANTOR: Judge, he is talk --

12 MR. ROSENFELD: This is absurd.

13 THE COURT: Let the jury take the one ruling.

14 MR. ROSENFELD: This is unprofessional.

15 THE COURT: The evidence --

16 MR. CANTOR: Look, he is going on like Tennessee  
17 Brook.

18 THE COURT: Mr. Cantor, please all right.

19 Mr. Rosenfeld.

20 Q. Doctor, you are asked to testify for the prosecution  
21 because you are the one who conducted autopsies?

22 MR. CANTOR: He is asking a leading question;

23 isn't it? And it's his witness so I object.

24 MR. ROSENFELD: Objection to colloquy. You said  
25 one or two words, your Honor.

jo-f

**DR. KAPPEN-PEOPLE-REDIRECT**

1 THE COURT: I am allowing it.

2 MR. CANTOR: Sorry, your Honor?

3 THE COURT: Allowing it.

4 MR. CANTOR: Even though it's leading?

5 THE COURT: That's your argument not the Court's.

6 MR. CANTOR: Very well. I take an exception.

7 MR. ROSENFELD: Shall I keep going or stop? I  
8 don't know with his constant interruption it's impossible.

9 THE COURT: You may continue.

10 MR. CANTOR: You know, he is just engaging in  
11 colloquy and misbehavior.

12 THE COURT: Please continue.

13 MR. ROSENFELD: Can I have the last question read  
14 back.

15 THE COURT: Madam reporter.

16 (Whereupon, the court reporter read back the  
17 above-requested testimony.)

18 MR. CANTOR: And I objected on the leading  
19 grounds.

20 MR. ROSENFELD: I will rephrase.

21 THE COURT: Rephrase that question.

22 MR. ROSENFELD: Thank you.

23 Q. Doctor, is there any other agency in New York that  
24 conducts autopsies other than the Office of the Chief Medical  
25 Examiner?

jo-1

**DR. RAPPEN-PEOPLE-REDIRECT**

1 THE COURT: You mean government agency or?

2 Q. Okay. Government agency?

3 MR. CANTOR: Judge, that you know of.

4 A. No, no other agencies have the jurisdiction by law to  
5 conduct autopsies on non-natural death in the City of New York.

6 (Continued onto the next page.)

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1 Q When there's a homicide in the City of New York,  
2 specifically the Bronx, who is required to conduct the autopsy?

3 A One of the medical examiners.

4 Q So when there's a homicide trial like this one,  
5 there's a death involved, who is the required person to come  
6 testify at the trial?

7 MR. CANTOR: Is that not leading, your Honor?

8 THE COURT: No.

9 MR. CANTOR: No. Okay.

10 A If you want information regarding the cause of death  
11 and the findings of the autopsy, then of course you have to ask  
12 the medical examiner who did the autopsy to come and testify.

13 Q Someone such as yourself?

14 A That's correct.

15 Q Getting back to the questions about the urine,  
16 toxicology report of ethanol and the blood ethanol, the number  
17 0.39 gram percent, why is that number not the number that's  
18 relied on? Please take whatever you need to explain to the  
19 jury the differences.

20 A For two reasons. We don't look at values that are  
21 quantitative like .39 in the urine. One of the reasons as I  
22 said before is 'cause the bladder doesn't completely void every  
23 time a person urinates, some gets retained, and it can be  
24 retained for a long period of time. That invalidates the  
25 numbers of the quantitation. And also there is more water in

1 urine than in blood. Most of the research and everything that  
2 you're all familiar with regards to blood alcohol levels, those  
3 are the numbers that are in the law books. There are  
4 quantifications of ethanol in liver, in brain and you could  
5 look at those as well, but it's the blood alcohol that's used  
6 routinely and it's the most standardized because it doesn't  
7 change much if someone doesn't void completely or not.

8 MR. ROSENFELD: Thank you. I have no further  
9 questions.

10 RECROSS EXAMINATION

11 BY MR. CANTOR:

12 Q There are many private hospitals in the City of New  
13 York, are there not?

14 A There are.

15 Q And most, if not all of these hospitals have  
16 departments of pathology, is that not correct?

17 A I don't -- I'm not sure if every one of them does.

18 Q I said most, if not all. Why don't you listen to the  
19 question.

20 MR. ROSENFELD: Objection, your Honor. She did.

21 THE COURT: No need. She wanted a clarification.

22 Q You want a clarification. Most hospitals have  
23 departments of pathology?

24 A Most of them do.

25 Q And autopsies are conducted at these hospitals, is

1 that correct?

2 A No. That's definitely not correct.

3 Q That's definitely not correct?

4 A Exactly.

5 Q A private hospital in your medical career, to your  
6 knowledge, has never for instance at the request of a family  
7 member never performed an autopsy, is that your sworn  
8 testimony?

9 A Well, you're changing --

10 MR. ROSENFELD: Object. This is a  
11 generalization.

12 MR. CANTOR: Why do we have the colloquy?

13 THE COURT: Do you have an objection?

14 MR. ROSENFELD: Objection.

15 THE COURT: That's overruled.

16 Q Please answer.

17 A Not all public or private hospitals conduct autopsies.

18 Q Some do?

19 A Some do. Not all of them.

20 Q Ma'am, I've heard it the first time. If you want to  
21 go on and repeat it a few more times, go ahead.

22 MR. ROSENFELD: Objection.

23 THE COURT: No need for editorializing.

24 Q Okay. So oftentimes in cases where an accused are  
25 charged with murder or manslaughter, there are medical issues,



1 is that not a truism?

2 A Yes.

3 Q And oftentimes medical testimony in a given case  
4 depending on the facts and circumstances can inure to the  
5 benefit of an accused, correct?

6 MR. ROSENFELD: Objection. Outside the scope of  
7 redirect.

8 MR. CANTOR: Oh, no, please.

9 THE COURT: I'll allow it.

10 Q Is that not correct, madam?

11 A I didn't understand that.

12 Q You didn't understand. What word didn't you  
13 understand?

14 MR. ROSENFELD: Objection, your Honor.

15 A I don't remember what the question was.

16 Q You have a short memory span.

17 MR. CANTOR: Can the reporter --

18 MR. ROSENFELD: Objection.

19 A You're making me nervous.

20 THE COURT: No need to editorialize.

21 MR. CANTOR: Can we have the court reporter over  
22 Mr. Rosenfeld that's yelling read the question?

23 THE COURT: Mr. Rosenfeld is standing to  
24 interject an objection.

25 MR. CANTOR: He engages in speechified --

1 MR. ROSENFELD: Objection. Again he's doing it.

2 THE COURT: Objection is sustained.

3 MR. CANTOR: You overruled it.

4 THE COURT: That was the last question.

5 MR. CANTOR: Can we have it re-read?

6 THE COURT: You can.

7 MR. CANTOR: Thank you.

8 (Whereupon, the requested portion was read by the  
9 court reporter.)

10 Q Is that correct? Yes or no?

11 A What's inure?

12 Q It means it can flow to attach to the benefit of the  
13 defendant depending on the facts and circumstances of a case.

14 A I still don't really understand.

15 Q I can't hear you, madam.

16 A I still don't really understand what you're asking.

17 Q Okay. Oftentimes, and you must have learned this in  
18 your 15 years of pathology, pathologists when they're employed  
19 by the Office of Chief Medical Examiner such as Dr. Milton  
20 Halpern or Dr. Michael Dodden or Dr. Charles Hirsch have  
21 testified on behalf of defendants because of medical issues  
22 that they testify about in favor of an accused, do you  
23 recognize that?

24 MR. ROSENFELD: Objection. Outside the scope of  
25 redirect.

1 THE COURT: Sustained.

2 MR. CANTOR: What?

3 THE COURT: Sustained.

4 Q There are times when medical issues within the purview  
5 of a forensic pathologist can favor a defendant, is that not  
6 correct?

7 MR. ROSENFELD: Objection.

8 THE COURT: Subject to connection.

9 MR. CANTOR: Thank you.

10 Q Is that not correct, there are times?

11 A Their opinions may favor the defendant.

12 Q Right. Now, what I want to know is how many times  
13 have you actually testified in a court of law on behalf of the  
14 defense?

15 MR. ROSENFELD: Objection. Asked and answered.

16 MR. CANTOR: No.

17 MR. ROSENFELD: Outside the scope of redirect.

18 MR. CANTOR: No. He brought --

19 THE COURT: One second. No need to argue. I  
20 haven't ruled. The objection is overruled.

21 MR. CANTOR: Thank you.

22 Q Please answer the question.

23 A From what I understand, approximately five or less  
24 times.

25 Q No. I mean actually testifying, not being asked.

1 A Both. Both asked and testifying.

2 Q So here's the question, how many times? One, two,  
3 three, four? How many times have you actually been in a  
4 witness box called by a defense attorney and testified on  
5 behalf of the defendant?

6 A In a criminal trial?

7 Q In a criminal trial.

8 A Zero.

9 Q Zero.

10 MR. CANTOR: Thank you, your Honor.

11 THE COURT: Mr. Rosenfeld.

12 MR. ROSENFELD: People have no further questions.

13 THE COURT: Thank you. Doctor, thank you, you're  
14 excused.

15 THE WITNESS: Thank you.

16 (Whereupon, the witness left the stand and the  
17 courtroom.)

18 THE COURT: Counselors, come up.

19 (Whereupon, there was a discussion held, off the  
20 record, at the bench, among the Court, the assistant  
21 district attorneys, defense counsel, and outside the  
22 hearing of the defendant and the jury.)

23 (Whereupon, the following takes place, on the  
24 record, in open court, in the presence of the Court, the  
25 assistant district attorneys, defense counsel, the

1 defendant and the jury.)

2 THE COURT: Madam Forelady, ladies and gentlemen  
3 of the jury, we've now completed the witnesses for today.  
4 I ask the district attorney, Mr. District Attorney, will  
5 there be any further witnesses on behalf of the People?

6 MR. ROSENFELD: At this time, no, your Honor.

7 THE COURT: People otherwise rest?

8 MR. ROSENFELD: Yes, your Honor.

9 THE COURT: People having rested, I reserve to  
10 the defense the usual motion at the close of the People's  
11 case.

12 Ladies and gentlemen, you have now heard the  
13 People's case. We have completed that. We're now going to  
14 recess until the day after the 4th, which would be  
15 Thursday, Fourth of July obviously is a holiday, and on  
16 that day we'll turn to the defense to see what they may or  
17 may not wish to do.

18 MR. CANTOR: Judge, can we step up?

19 THE COURT: Yes.

20 MR. ROSENFELD: Can we wait until I get up there,  
21 your Honor, so I know what he's talking about?

22 (Whereupon, there was a discussion held, off the  
23 record, at the bench, among the Court, the assistant  
24 district attorneys, defense counsel, and outside the  
25 hearing of the defendant and the jury.)

1 THE COURT: So we'll see each other on Thursday  
2 morning. Please be here at 9:30 sharp right outside the  
3 door. Please remember again the cautions. No discussions  
4 with anyone, not among yourselves. In the unlikely event  
5 anyone approaches you, you will have to report that to the  
6 Court. Again, you are not to do any researches detectives,  
7 investigators.

8 You may have vivid memory of what has transpired  
9 until this time by way of evidentiary testimony and  
10 exhibits and that stipulation thus far, which is the only  
11 evidence in the case at this point. We'll see each other  
12 then. Have a pleasant Fourth of July. Follow the officer.

13 (Whereupon, the jury left the courtroom.)

14 THE COURT: Jury having been excused, Mr.  
15 District Attorney, you will have Ms. Dempsey for us on  
16 Thursday. Mr. Cantor, you will turn over to the district  
17 attorney and to the Court any list you wish to share or you  
18 have obligation to share.

19 MR. CANTOR: I have no obligation under the law,  
20 Judge. You've asked me.

21 THE COURT: That would be very helpful to the  
22 Court for its scheduling purposes, yes, that is correct.  
23 But the People are likewise entitled to certain  
24 information, whatever that is.

25 MR. CANTOR: I'll conform myself to the CPL.

1 THE COURT: That's correct.

2 MR. CANTOR: However, your Honor has asked me  
3 something that I am hard pressed to refuse when you ask for  
4 the comity --

5 THE COURT REPORTER: Excuse me, Mr. Cantor, can  
6 you repeat that?

7 MR. CANTOR: You can tell her what I said.

8 THE COURT: I missed it.

9 MR. CANTOR: The comity, C-O-M-I-T-Y due a jurist  
10 of your stature.

11 THE COURT: Yes, yes, yes.

12 MR. CANTOR: That is what I said.

13 THE COURT: All right.

14 MR. CANTOR: What time Thursday?

15 THE COURT: We told them 9:30. For us, bring up  
16 the gentleman.

17 MR. CANTOR: I have the idea.

18 THE COURT: 9:45.

19 MR. ROSENFELD: Your Honor, the reason I  
20 requested in advance, tomorrow is a holiday, information  
21 concerning any potential civilian witnesses who may testify  
22 so I wouldn't cause any delay in the trial when this person  
23 testifies in running any background checks or finding out  
24 any information that will be necessary for me to conduct  
25 the cross examination of that witness.

1 THE COURT: I would concur with that.  
2 Information being a good one and I ask you, Mr. Cantor, to  
3 please inform accordingly.

4 MR. CANTOR: It's a request, Judge.

5 THE COURT: Yes, it is.

6 MR. CANTOR: I certainly take that very  
7 seriously.

8 THE COURT: Thank you. All right. We stand in  
9 recess. Have a good holiday.

10 (Whereupon, the defendant left the well of the  
11 courtroom.)

12 (Whereupon, Mr. Cantor left the courtroom and  
13 returned.)

14 MR. CANTOR: You asked that I return?

15 THE COURT: My request was to do that today.

16 MR. CANTOR: I don't have any information.

17 THE COURT: Well, then telephonically please  
18 arrange with the district attorney for a time certain you  
19 will call him.

20 MR. CANTOR: I will not call him. It's his  
21 request. He will call me.

22 THE COURT: Whatever you both agree to.

23 MR. CANTOR: He will call me.

24 THE COURT: All right. Wait a second, Mr.  
25 Cantor.



1 MR. CANTOR: I can't do anything in the absence  
2 of my client.

3 THE COURT: Wait a second.

4 MR. CANTOR: This is in the absence of my client.

5 THE COURT: I want you to make a time with him  
6 that he will call you. This way you can transmit the  
7 information to him.

8 MR. CANTOR: And he knows my telephone number.

9 THE COURT: Let's make it a time certain.

10 MR. ROSENFELD: I'll call at 4:30.

11 MR. CANTOR: I doubt 4:30, I doubt that I'll be  
12 in my office.

13 THE COURT: You tell us a time that's convenient.

14 MR. CANTOR: I doubt that I will be in my office.  
15 The time I will be in my office will be about, I don't  
16 know, about quarter after 5 I should arrive at my office.

17 THE COURT: That sounds fine.

18 MR. CANTOR: I'll ferret out whatever  
19 information, if any.

20 THE COURT: That's good.

21 MR. CANTOR: But this is a request, Judge.

22 THE COURT: Yes, it is.

23 (Whereupon, the trial is continued and the case  
24 is adjourned to Thursday, July 5, 2012, at 9:30 a.m.)  
25

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX : CRIMINAL TERM - PART: T-14

3 ----- X

4 THE PEOPLE OF THE STATE OF NEW YORK,

Indictment #27/2010

5 - against -

Cont'd Jury Trial

6  
7 DAVID DELGADO,

8 Defendant.

9 ----- X

10 July 5, 2012

11 265 East 161st Street  
12 Bronx, New York 10451

13 B E F O R E:

14 HONORABLE DOMINIC R. MASSARO,

15 J U S T I C E

16  
17 (Appearances same as previously noted.)

18  
19 TRICIA L. ROBINSON, CSR, RPR  
20 Senior Court Reporter

21 (Whereupon, the following takes place, on the  
22 record, in open court, in the presence of the Court, the  
23 assistant district attorneys, defense counsel, the  
24 defendant, and outside the presence of the jury.)

25 THE COURT: Good morning. Mr. Clerk.

1 THE CLERK: Case on trial, People of the State of  
2 New York against David Delgado. Let the record reflect the  
3 presence of the district attorney's office, defense  
4 attorney and defendant. The sworn jurors are not present  
5 at this time.

6 THE COURT: Mr. Cantor, I understand you wanted  
7 to make a record.

8 MR. CANTOR: Eight days ago, your Honor, I  
9 advised the Court and the People that I required Melissa  
10 Dempsey for brief --

11 THE COURT: You did.

12 MR. CANTOR: -- continued cross examination.

13 I'm not prepared to go forward with my case until  
14 I have that opportunity. I've given more than advance  
15 notice.

16 THE COURT: Is she present?

17 MR. CANTOR: I do not know. I do not control  
18 that, Judge.

19 THE COURT: Well --

20 MR. CANTOR: We'll find out.

21 THE COURT: You could have just asked Counsel.

22 MR. ROSENFELD: She's right outside.

23 MR. CANTOR: Here we go, Judge.

24 THE COURT: Very good.

25 MR. CANTOR: Thank you.

1 THE COURT: You're welcome.

2 Let us recall her to the witness stand.

3 Let us first bring out the jury, of course.

4 MR. ROSENFELD: It's my understanding we're  
5 calling her for a very brief, I think it's re-recross that  
6 Mr. Cantor has asked for.

7 THE COURT: So thirty seconds at one point, give  
8 or take a little. That's fine.

9 MR. CANTOR: It's continued cross, but it is  
10 short in duration.

11 THE COURT: Very good.

12 COURT OFFICER: Jury entering.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: Madam Forelady, ladies and gentlemen  
15 of the jury, good morning again to you.

16 JURORS: Good morning.

17 THE COURT: We trust everyone had a good Fourth  
18 of July. We're continuing with the case. We're recalling  
19 People's witness Ms. Dempsey. You recall Ms. Dempsey,  
20 she's here.

21 (Whereupon, the witness entered the courtroom and  
22 takes the stand.)

23 THE COURT: Ms. Dempsey, good morning to you.

24 THE WITNESS: Good morning.

25 THE COURT: I remind you that you continue for

1 all purposes under oath, all right, ma'am?

2 THE WITNESS: Yes.

3 THE COURT: You may be seated for some very brief  
4 continued cross examination by Mr. Cantor. So we'll start  
5 with that.

6 Mr. Cantor, I invite you.

7 CONTINUED CROSS EXAMINATION

8 BY MR. CANTOR:

9 Q Ms. Dempsey, you were here in this courtroom on June  
10 28 when you were asked questions by the prosecutor and myself,  
11 correct?

12 A Yes.

13 Q When I asked you questions, it was on what they call  
14 cross examination. Is it not a fact that you told me that on  
15 cross examination that when you were being examined by Mr.  
16 Rosenfeld on direct examination you never said I thought that  
17 David and Sosa were arguing?

18 A No.

19 Q And you went so far as to say on cross examination  
20 that you never used the word arguing when you were being  
21 questioned by Mr. Rosenfeld, correct?

22 A Correct.

23 Q I'm now going to read something to you from the  
24 official certified court record, which is produced by a  
25 certified court reporter. And then after I read it, I'll ask

1 you a question, do you understand me?

2 A Yes.

3 Q Page 878, direct examination by Mr. Rosenfeld of Ms.  
4 Dempsey line 14:

5 "QUESTION: Please continue."

6 "ANSWER: Sosa was sitting there. All of a sudden, I  
7 see Mr. David come out of the kitchen and he's in front of  
8 Sosa. I thought he was arguing."

9 Did you make that answer under oath on that question?

10 Yes or no?

11 A Yes.

12 Q You realize when you testified you were under oath?

13 A Of course.

14 MR. ROSENFELD: Objection, your Honor.

15 THE COURT: She's acknowledging she was under  
16 oath.

17 Q And you understand that an oath obligates you to tell  
18 the truth --

19 A Yes.

20 Q -- under penalty of perjury and under moral authority,  
21 correct?

22 A Correct.

23 MR. ROSENFELD: Objection.

24 THE COURT: Yes. All right.

25 MR. CANTOR: Can she answer?

1 MR. ROSENFELD: Objection.

2 THE COURT: The objection is sustained.

3 Q Do you understand that an oath obligates you by law to  
4 tell the truth?

5 MR. ROSENFELD: Objection;

6 THE COURT: Sustained. This has already been the  
7 instruction. The jury is aware.

8 MR. CANTOR: Okay.

9 THE COURT: Mr. Rosenfeld.

10 REDIRECT EXAMINATION

11 BY MR. ROSENFELD:

12 Q Ms. Dempsey, were you able to hear any of the words  
13 between Sosa and the defendant Mr. David when you said that?

14 A Of course not. The music was too loud.

15 Q When you said, "I thought he was arguing," what did  
16 you mean by that?

17 MR. CANTOR: Objection. It speaks for itself.

18 THE COURT: Yes, it does.

19 MR. ROSENFELD: Okay. No further questions.

20 THE COURT: You may stand down. Thank you.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness left the stand and the  
23 courtroom.)

24 THE COURT: All right. People have already  
25 indicated that they have now rested. We will now turn to

1 the defense. The Court having reserved to the People usual  
2 motion at the close of the defense, that is the usual  
3 motion at the close of the People's case, we now turn to  
4 the defense to see if they wish to go forward with any  
5 witnesses. We already know there is no obligation on the  
6 part of the defense to do anything whatsoever.

7 We will now ask to see if they wish to. Mr.  
8 Cantor.

9 MR. CANTOR: I wish to preserve the record by way  
10 of motions for trial order of dismissal. I wish that the  
11 jury retire for a short period of time and I will not make  
12 full blown motions, but for purposes of preservation.

13 THE COURT: I've already reserved them for you.

14 MR. CANTOR: Well --

15 THE COURT: As I just stated on the record a  
16 moment ago.

17 MR. CANTOR: I heard it, Judge.

18 THE COURT: Okay. So it's reserved.

19 MR. CANTOR: It obliges me nonetheless.

20 THE COURT: All right. We'll do it, get the  
21 housekeeping out of the way.

22 MR. CANTOR: Thank you.

23 THE COURT: All right. Madam forelady and ladies  
24 and gentlemen of the jury, please follow the officer. We  
25 have some technical legal things we must do and then we'll



1 call you right back.

2 (Whereupon, the jury left the courtroom.)

3 THE COURT: All right. The jury has been  
4 excused. On the non prima facie case, Mr. Cantor.

5 MR. CANTOR: If it please, your Honor, firstly,  
6 we're moving for a trial order of dismissal with respect to  
7 the count -- first count of murder in the second degree.  
8 Specifically, we do not think that the People have at least  
9 a prima facial level looking at the evidence and viewing  
10 the evidence in the light most favorable to the People made  
11 out the element of intent to cause death, the mens rea  
12 element of murder in the second degree, and it's our  
13 position that that ought be dismissed by way of a trial  
14 order of dismissal.

15 Secondly, if it please, your Honor, there is a  
16 count of manslaughter in the first degree, which is the  
17 second count of the indictment, which requires as a  
18 constituent element to cause serious physical injury. We  
19 suggest that the record viewed in the light most favorable  
20 to the People indicates that all the defendant did with  
21 respect to both murder in the second degree and  
22 manslaughter in the first degree is wildly swing out, being  
23 a stranger at that party and knowing no one else other than  
24 Margie and having been threatened, by testimony of the  
25 people's witnesses, all of the people's witnesses,

1 including this last witness who ultimately came to  
2 recognize that under oath she said arguing.

3 We're going to suggest to your Honor that the  
4 mens rea element, intent to cause serious physical injury  
5 with respect to the second count of the indictment, has not  
6 been made out to a prima facial level. Mainly, in view in  
7 the light most favorable to the prosecution, the People  
8 have not established that element beyond a reasonable  
9 doubt. And we suggest to your Honor that you be compelled,  
10 that you are compelled by virtue of operation of law to  
11 dismiss both murder in the second degree and manslaughter  
12 in the first degree.

13 Now, as to the third count, I don't know what the  
14 Court's intent is and I don't know what the People's intent  
15 is with respect to that A misdemeanor of criminal  
16 possession of a weapon in the fourth degree, I believe, but  
17 in any event, viewing the evidence in the light most  
18 favorable to the People, there has really been no  
19 description of that knife other than a bent -- a bend at  
20 the end of the knife. No one has testified really as to  
21 the type of knife it was, testified it was a beige handle,  
22 brown handle, one does not even know if it is a knife. But  
23 nonetheless, we don't think that the proof rises to the  
24 level of a prima facie case.

25 Viewing the evidence in the light most favorable

1 to the People, we suggest that the People have not  
2 established that my client was in possession of a knife  
3 with intent to use it unlawfully against another, that the  
4 proof does not rise to the level of guilt beyond a  
5 reasonable doubt viewing it in the light most favorable to  
6 the People. And thus we ask for a trial order of dismissal  
7 with respect to that third count of the indictment.

8 At the end of the case, just as a matter of  
9 courtesy, we will be asking the Judge in conference for  
10 other charges so to give your Honor, so to speak, a leg up,  
11 but for the moment we're just moving for trial orders of  
12 dismissal with respect to the three counts.

13 THE COURT: Thank you.

14 MR. ROSENFELD: People will rest on the record,  
15 your Honor, that the evidence proves in the light most  
16 favorable to the People that each and every one of those  
17 counts have been proved, and each and every one of the  
18 elements of those counts have been proved.

19 THE COURT: Yes. With respect to the application  
20 and the three prongs therein, the Court denies. This will  
21 be a matter for the jury to determine and the application  
22 motion is denied.

23 MR. CANTOR: Exception.

24 THE COURT: Noted. Let us now bring back the  
25 jury.

1 COURT OFFICER: Jury entering.

2 (Whereupon, the jury entered the courtroom.)

3 THE COURT: All right. The Court having attended  
4 to the business at hand, we're now ready to turn to the  
5 defense to see if the defense wishes to go forward with any  
6 witnesses.

7 Mr. Cantor, does the defense intend to go forward  
8 with any witnesses?

9 MR. CANTOR: It does. If it please, your Honor,  
10 defense calls to the stand David Delgado.

11 THE COURT: Mr. Delgado to the witness stand.

12 (Whereupon, the witness entered the stand.)

13 THE CLERK: Do you solemnly swear the testimony  
14 you give this Court shall be the truth, the whole truth and  
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 COURT OFFICER: Have a seat.

18 Witness gives his name as David Delgado, resident  
19 of Brooklyn.

20 THE COURT: Good morning, Mr. Delgado.

21 THE WITNESS: Good morning, sir.

22 THE COURT: Just sit back, be comfortable, listen  
23 carefully what Mr. Cantor will pose and later the district  
24 attorney. Answer please as you know only the question that  
25 is asked.

1 THE WITNESS: Okay.

2 THE COURT: Keep your voice loud so everyone  
3 might hear.

4 THE WITNESS: Okay, sir.

5 THE COURT: Mr. Cantor, your witness.

6 MR. CANTOR: Indeed, your Honor, my witness.

7 DIRECT EXAMINATION

8 BY MR. CANTOR:

9 Q David, how old are you?

10 A I'm 36 years Old.

11 Q You see this last lady, she has to hear you. You got  
12 to keep your voice up.

13 A I'm 36 years Old.

14 Q And what country were you born in?

15 A In United States.

16 Q Once again --

17 A Brooklyn, New York.

18 Q And your parents, where were they born?

19 A In Puerto Rico.

20 Q Now, David, did there come a time after being born in  
21 Brooklyn, New York, that you moved to Puerto Rico which is a  
22 territory of the United States?

23 A Yes.

24 Q How old were you when you moved to Puerto Rico with  
25 your family?

1 A I was 16 years old.

2 Q Now, did there come a time, David, when you were  
3 approximately 16 years old that into your life came a  
4 step-father?

5 A Yes.

6 Q Had the step-father been with your mother when you  
7 were living here in the United States before you went to Puerto  
8 Rico?

9 A Yes.

10 Q For how long had you resided with your mother and your  
11 step-father here in the United States, New York City?

12 A For ten years.

13 Q Do you have any siblings?

14 A Yes.

15 Q Brothers, sisters?

16 A Yes, I do.

17 Q How many?

18 A With my moms, one, and for my father side five.

19 Q Okay. Now, did there come a time either here in New  
20 York City or in Puerto Rico that your step-father did something  
21 to you?

22 A Here in New York.

23 Q For how long a period was he doing whatever he did?

24 A Like for two years, three years max.

25 Q What was he doing --

1 MR. CANTOR: Withdrawn.

2 Q How old were you when he began doing this?

3 A I was eight. Between eight, nine and ten.

4 Q What was he doing to you?

5 THE COURT: And this was back here in the United  
6 States?

7 Q Was this in the United States?

8 A Yes.

9 Q You got to talk louder.

10 A Yes.

11 Q What was he doing to you for this approximate two year  
12 period of time?

13 A He -- he touched me. He used to touch me.

14 Q Touch you where, David?

15 A In my private parts.

16 Q I want you to be -- I know it's difficult, David, but  
17 you have to tell this jury, more specifically where was he  
18 touching?

19 A He used to touch me in my -- my anal.

20 Q Where?

21 A My penis.

22 THE COURT: Take your time.

23 MR. CANTOR: Do we have any tissues, Judge?

24 (Whereupon, a brief pause was taken.)

25 Q Tell me when you're ready to continue, David. If at

1 any time you want some water, just ask a court officer behind  
2 you.

3 A I'm ready.

4 Q Okay. I want you to specifically during this period  
5 when you were eight, nine and ten here in New York, I want you  
6 to describe with specificity what your step-father was doing to  
7 you.

8 A When my moms would go to work --

9 Q I can't hear you.

10 A When my moms would go to work or she go to church, she  
11 would leave me and my brother with my step-father, and there  
12 would -- there would come a time that he would force us to  
13 watch porno movies with him, and when I go to sleep or when my  
14 brother, he would just walk into our room and he would just  
15 start touching me, and he would tell me don't move or I'm just  
16 gonna hit you, stuff like that.

17 Q Where did he touch you, David?

18 A Touched me in my anal and my penis.

19 Q In your anus?

20 A Yeah.

21 Q And in your penis?

22 A Yes.

23 Q Did any part of his body come into contact with your  
24 anus and/or your penis?

25 A His finger.



1 Q This was going on for approximately two years?

2 A Like three years.

3 Q David, as he was touching you, was he doing anything  
4 to his own body?

5 A He would touch himself and he would make like noises  
6 like yeah, that's what you like he would tell me.

7 Q Did he ever masturbate in front of you or your brother  
8 in your presence?

9 MR. ROSENFELD: Objection. Leading.

10 THE COURT: I'll allow it.

11 A Yes.

12 Q Now, David, did you tell your mother about these  
13 frequent occurrences?

14 A I spoke to my mom and she didn't believe me. She  
15 didn't believe me.

16 Q Okay. David, now, did there come a time - you were  
17 born in what year?

18 A 1975.

19 Q Did there come a time when you were 14 years old that  
20 you attempted something?

21 A Yes, I attempted suicide.

22 Q I want a loud vice.

23 A Yes.

24 Q What did you attempt?

25 A Suicide.

1 Q And how did you attempt at 14 suicide?

2 A I drank some painkillers and I jumped in the river.

3 Q Were you rescued?

4 A Yes.

5 Q I want you to tell in a loud voice why it was at such  
6 an age of 14 you attempted suicide.

7 A I was just ashamed of myself and I always thought I  
8 wasn't worth nothing.

9 Q I'm sorry?

10 A I was ashamed of myself. I thought I wasn't worth  
11 nothing.

12 MR. CANTOR: Can I have that read back, Judge?

13 THE COURT: Yes.

14 (Whereupon, the requested portion was read by the  
15 court reporter.)

16 Q David, can I continue?

17 A Yes.

18 Q Did there come a time at age 25 that you attempted  
19 something?

20 A I attempted suicide again.

21 Q How? By what means?

22 A I tried to hang myself.

23 Q You were obviously not successful, you're here today?

24 A No.

25 Q Correct?

1 A Yes.

2 Q And tell us why at age 25 you tried to hang yourself?

3 A I was having some problems with my ex-wife and I just  
4 couldn't handle it.

5 Q I'm sorry?

6 A I couldn't just handle it no more. I was -- too much  
7 problems with her and my other baby mother of my kids.

8 Q David, were you happy or depressed or indifferent?

9 MR. ROSENFELD: Objection to leading.

10 THE COURT: I'll allow it.

11 A I was depressed.

12 Q Now, did there come a time about seven years later at  
13 age 32 that you attempted something?

14 A I attempted suicide again.

15 Q By how?

16 A Tried to hang myself again.

17 Q What was your state of mind at that time?

18 A Just wanted -- just kill myself that day.

19 Q Why?

20 A I was so depressed, you know.

21 Q I can't hear you.

22 A I saw my wife with another guy so I just -- just  
23 wanted to kill myself that day.

24 Q Now, there came a time, David, when you were arrested  
25 on the 26th of December 2009, about 30 months ago, correct?

1 A Correct.

2 Q You were sent by the Department of Corrections for a  
3 mental evaluation at the Cumberland Diagnostic Treatment Center  
4 in Brooklyn, correct?

5 A Correct.

6 Q They evaluated you, questioned and examined you,  
7 correct?

8 A Correct.

9 Q At that time, were you feeling down, depressed or  
10 hopeless?

11 A I was hopeless. I was feeling hopeless.

12 Q Was that once in a while, every day?

13 A Nearly every day.

14 Q Did you have little interest or pleasure in doing  
15 things? Was that an occurrence in your life?

16 MR. ROSENFELD: Objection. Leading.

17 THE COURT: I'll allow it.

18 A Nearly every day.

19 Q Did you have trouble falling or staying asleep?

20 MR. ROSENFELD: Objection.

21 THE COURT: I'll allow it subject to connection.

22 A Nearly every day.

23 Q Were you feeling tired or having little energy?

24 MR. ROSENFELD: Objection.

25 THE COURT: Subject to connection, Mr. Cantor.

1 MR. CANTOR: Thank you.

2 A Nearly every day.

3 Q Did you have a poor appetite?

4 A Nearly every day.

5 Q Were you feeling bad about yourself or that you were a  
6 failure or had let down yourself or your family?

7 MR. ROSENFELD: Objection.

8 THE COURT: Compound question.

9 Q All right. Were you feeling bad about yourself?

10 MR. ROSENFELD: Objection.

11 THE COURT: I'll allow it.

12 A Nearly every day.

13 Q Were you feeling that you were a failure?

14 MR. ROSENFELD: Objection.

15 THE COURT: I'm allowing the line.

16 MR. CANTOR: Thank you.

17 THE COURT: Your continuing objection is noted.

18 A Nearly every day.

19 Q Were you feeling that you had let yourself or your  
20 family down?

21 A Nearly every day.

22 Q Did you have trouble concentrating on things such as  
23 reading a newspaper or watching a television program?

24 A Nearly every day, yes.

25 Q Would it be a fair statement to say that from an early

1 age until the present you suffer from depression?

2 MR. ROSENFELD: Objection.

3 THE COURT: Overruled.

4 A Yes.

5 Q Have you been diagnosed by a physician or physicians  
6 as suffering from depression?

7 A Yes.

8 Q Do you know what bipolarity is?

9 A Yes.

10 Q Have you ever been diagnosed as suffering from being  
11 bipolar?

12 A Yes.

13 MR. ROSENFELD: Objection.

14 THE COURT: Overruled.

15 Q This goes back from the present to when, David?

16 A To now.

17 Q From now back to when?

18 A At the age of -- I was 14. I was depressed.

19 Q Now, as a result of these mental illnesses, were you  
20 ever prescribed anything?

21 MR. ROSENFELD: Objection.

22 THE COURT: Overruled.

23 MR. ROSENFELD: Characterization.

24 Q You can answer.

25 A Yes.

tr/a D. Delgado - Defense - Direct

1 Q What?

2 A For depression.

3 Q What was that? You got to speak in a loud voice.

4 A I was given medication for depression and for mood  
5 establishes.

6 Q Mood stabilizers?

7 A Mood stabilizers, yes.

8 Q Do you know what the word psychotropic means?

9 A No.

10 Q But you were given medicine to control your depression  
11 and your bipolarity?

12 A Yes.

13 Q How long have you been --

14 MR. CANTOR: Withdrawn.

15 Q You're presently in the custody of the Department of  
16 Corrections, correct?

17 A Yes.

18 Q Do you still get these medications?

19 A Yes, I do.

20 Q So for how many years in total have you been on these  
21 medications?

22 A Nearly twenty years. On and off.

23 Q Now, what was the last grade if you were in school  
24 that you completed?

25 A Eighth grade.

1 Q You can read and write in English, can you not?

2 A Barely.

3 Q But you can?

4 A Yes.

5 MR. CANTOR: Judge, I'd like the People's  
6 exhibits. That one will suffice.

7 Q You saw People's 14 on the television set, did you  
8 not?

9 A Yes.

10 Q That's in your hand?

11 A Yes.

12 Q That's your handwriting?

13 A Yes.

14 Q That's your signature?

15 A Yes.

16 Q So would it be a fair statement from the time you  
17 first came into contact with the police on the 26th of December  
18 2009 until you were brought before a court you were fully  
19 cooperative with the police?

20 A Yes.

21 Q And you did what they asked?

22 A Yes, I did.

23 Q And how tall are you, David?

24 A I'm 5'-6".

25 Q And on December 26, 2009, how much did you weigh?



1 A Approximately like 190.

2 Q Okay. Now, when you were prescribed these medicines  
3 for your bipolarity and your depression, had you been informed  
4 not to drink alcohol while on these medications?

5 MR. ROSENFELD: Objection to leading.

6 THE COURT: I'll allow it.

7 A Yes.

8 Q Do you recall testimony here in this courtroom while  
9 you were present that on the night of the party, the 24th of  
10 December 2009 carrying forth into the 25th of December '09,  
11 that you had six hard drinks of alcohol?

12 A Yes.

13 Q And some beer?

14 A Yes.

15 Q Is that true?

16 A Yes, it is true.

17 Q Well, what, if any, effect did that have on your state  
18 of mind --

19 MR. CANTOR: Withdrawn.

20 Q Had you taken the medications that day?

21 A I did.

22 Q Before you went to the party?

23 A Yes, I did.

24 Q So I want you to tell the jury what effect that had on  
25 your mind, the six hard -- the six drinks of hard liquor and

1 the cans of Coors beer?

2 A I was pretty drunk.

3 Q Was your head stable? Was it moving?

4 A I was kind of dizzy.

5 Q Now, way back when you had been convicted of a felony,  
6 correct?

7 A Excuse me?

8 Q Way back when you had been convicted of a felony?

9 A In 1991.

10 Q Okay. Now, when you lived in Puerto Rico, were you  
11 ever convicted of a felony?

12 A No.

13 Q A misdemeanor?

14 A Yes.

15 Q A misdemeanor is contrasted to a violation?

16 A Yes.

17 Q Which one? A misdemeanor or a violation?

18 A Misdemeanor, misdemeanor.

19 Q Were you present in court when the Judge at a hearing  
20 ruled?

21 MR. ROSENFELD: Objection, your Honor. It's an  
22 improper question.

23 THE COURT: Well, let me hear the question.

24 Q Were you?

25 A Yes.

1 Q Were you -- I'll ask you again.

2 A I don't understand the question.

3 Q Oh, you don't understand. Do you know that below a  
4 misdemeanor there's a violation?

5 A No, I didn't know that.

6 Q Okay. What I want to know is you've once been  
7 convicted of a felony, correct?

8 A Correct.

9 Q Had you been convicted of the lowest grade offense, a  
10 violation more than one time?

11 A Yes.

12 Q And that constitutes --

13 MR. CANTOR: Withdrawn. Withdrawn.

14 Q We move on to a new area. Now, for three years you  
15 abused alcohol, would that be a correct statement?

16 A Yes.

17 MR. ROSENFELD: Objection. Leading.

18 THE COURT: One second. The objection is  
19 sustained on that question.

20 Q When did you abuse -- just tell us when you abused  
21 alcohol. When? Approximately how old were you?

22 A At 14.

23 MR. ROSENFELD: Objection, your Honor, two  
24 questions.

25 THE COURT: Yes, two questions.

1 Q How old were you when you abused alcohol?

2 A 14.

3 Q How long did it last for, the abuse?

4 A For a year.

5 Q Did you ever abuse marijuana?

6 A Yes.

7 Q How old were you?

8 A I was young, 14.

9 Q For how long did it last?

10 A Like two years.

11 Q Now, when you were at the Cumberland facility having  
12 been sent there for diagnosis and analysis by the Department of  
13 Correction, was your mental health evaluated that you had  
14 mental health conditions that significantly affect functioning?

15 MR. ROSENFELD: Objection.

16 THE COURT: I'll allow it.

17

18 (Continued on next page.)

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Defense - DAVID DELGADO - direct

1644

1 MR. ROSENFELD: Objection.

2 THE COURT: I will allow it.

3 Q. Please answer.

4 A. Yes.

5 Q. And you also told them at the Cumberland Health  
6 Facility that you suffered from depression and bipolarity?

7 MR. ROSENFELD: Objection.

8 THE COURT: Overruled.

9 A. Yes.

10 Q. When you were examined at Cumberland they had your  
11 medical documentation there; did they not?

12 MR. ROSENFELD: Objection.

13 THE COURT: If he knows.

14 A. I am not aware of that.

15 Q. When you went to the Cumberland Health Facility you  
16 told them you were currently in mental treatment, correct?

17 MR. ROSENFELD: Objection, leading.

18 THE COURT: No, I will allow it.

19 A. Yes.

20 Q. And you told the Cumberland personnel that you had in  
21 the past received mental treatment, correct?

22 A. Yes.

23 Q. How many times have you been confined to a mental  
24 institution as a result of your mental condition?

25 A. Three times.

B-1jb

Defense - DAVID DELGADO - direct

1645

1 Q. How old were you the first time you were confined to a  
2 mental institution?

3 A. I was 14.

4 Q. And, approximately, how long did you remain there?

5 A. Um --

6 Q. Approximately?

7 A. A week.

8 Q. And the second time how old were you when you were  
9 mentally institutionalized?

10 A. I was 25.

11 Q. How long did you remain on that occasion?

12 A. I was there for four days. Four days.

13 Q. And on the third occasion you were mentally  
14 institutionalized how old were you, approximately?

15 A. Thirty two.

16 Q. And how long were you on that -- at that time  
17 institutionalized at a mental facility?

18 A. Three to four days.

19 Q. Now, you were diagnosed while at Cumberland for  
20 environmental restrictions; were you not?

21 A. Yes.

22 MR. ROSENFELD: Objection as to what somebody  
23 else diagnosed him.

24 THE COURT: Sidebar.

25 MR. CANTOR: No, Judge, please.

B-1jb

Defense - DAVID DELGADO - direct

1646

1 MR. ROSENFELD: I'm objecting.

2 THE COURT: Overruled.

3 Q. And were you diagnosed as having environmental  
4 restrictions concerning being in groups of people?

5 MR. ROSENFELD: Objection, it's all leading.

6 THE COURT: Yes, I -- I am allowing latitude.

7 A. Yes.

8 Q. There was a final diagnosis rendered after you were  
9 examined at Cumberland, correct?

10 MR. ROSENFELD: Objection.

11 THE COURT: Overruled.

12 A. Yes.

13 Q. And was that bipolarity and depression?

14 MR. ROSENFELD: Objection.

15 THE COURT: Overruled.

16 Q. Can you speak up?

17 A. Yes.

18 Q. And it was in 2009 that you were sent there, correct?

19 A. Correct.

20 Q. Well, let's get to 2009. You heard Margie testify in  
21 this courtroom; did you not?

22 A. Yes.

23 Q. And prior to going to the party on the evening of  
24 December 24, 2009, how long had you known Margie?

25 A. Like three, four months.

B-1jb

Defense - DAVID DELGADO - direct

1647

1 Q. And had you been going out with her socially?

2 A. Yes.

3 Q. And would you consider yourself -- there came a time  
4 during that three or four month period that you were her  
5 boyfriend?

6 A. Yes.

7 Q. You saw her exclusively and she saw you exclusively?

8 A. Yes.

9 Q. So did you, at first, when Margie suggested you go to  
10 the party on December 24, '09, were you at first willing to go?

11 MR. ROSENFELD: Objection, leading.

12 THE COURT: I will allow it.

13 A. No.

14 Q. But eventually -- withdrawn.

15 Did Margie press the issue so-to-speak?

16 MR. ROSENFELD: Objection, leading.

17 A. Yes.

18 THE COURT: I am allowing it.

19 Q. And did you eventually consent to go to the party?

20 A. Yes.

21 Q. And did you go to the party with Marjorie (sic.) on  
22 December 24, '09?

23 A. Yes.

24 Q. And aside from Margie I want you to give me an  
25 approximation of how many people were at the party at the time

B-1jb



Defense - DAVID DELGADO - direct

1648

1 that you arrived, approximately?

2 A. Twelve, like 12.

3 Q. Does that include you and Margie or is that you and  
4 Margie plus 12?

5 A. Including me and Margie.

6 Q. I'm sorry?

7 A. By including me and Margie.

8 Q. Okay. Of the other ten people were there also  
9 children there?

10 A. Yes.

11 Q. Okay. Did you know any of the adults or any of the  
12 children that were at the party?

13 A. I had met two people that --

14 Q. Prior to the party?

15 A. Yes.

16 Q. Who?

17 A. Carmen Diaz and Melissa Dempsey.

18 Q. And Melissa. Melissa was the young lady who testified  
19 here this morning concerning arguing, correct?

20 A. Correct.

21 Q. And you knew Carmen Diaz, she was the hostess of the  
22 party?

23 A. Yes.

24 Q. And aside from knowing them you had been introduced to  
25 them by Margie?

B-1jb

Defense - DAVID DELGADO - direct

1649

1 A. Yes.

2 Q. Did you know anything more about them?

3 A. No, nothing.

4 Q. So everyone at the party was of virtual a stranger to  
5 you except for Margie?

6 A. Right.

7 Q. And when you got to the party did Margie introduce you  
8 to everyone?

9 A. Yes, she did.

10 Q. And did you say hi, hello or how are you to the people  
11 that you were introduced to?

12 MR. ROSENFELD: Objection, leading.

13 THE COURT: I will allow it.

14 A. Yes.

15 Q. Did you shake hands with people that you were  
16 introduced to?

17 A. Yes, I did.

18 Q. And you heard testimony that there was hard liquor at  
19 the party, correct?

20 A. Correct.

21 Q. And there was beer cans at the party?

22 A. Yes.

23 Q. And you heard testimony you had had about six cups  
24 larger than the Dixie cup in front of you of hard liquor?

25 A. Yes.

B-1jb

Defense - DAVID DELGADO - direct

1650

1 Q. Is that correct?

2 A. That's correct.

3 Q. And that you had had beer from the beer cans?

4 A. Yes.

5 Q. Now, there came a time that you were introduced to  
6 Sosa when you arrived at the party, correct?

7 A. Correct.

8 Q. You had never met the man before?

9 A. Never.

10 Q. And Margie introduced you to him?

11 A. Yes, she did.

12 Q. And the very first time that you are meeting this man  
13 Sosa was he taller than you?

14 A. Yes, he is.

15 Q. You heard the medical examiner testify that he was six  
16 feet tall?

17 A. Yes.

18 Q. That would be approximately a half a foot taller than  
19 you?

20 A. Yes.

21 Q. The very first time that you met Sosa what did he say  
22 or do to you?

23 A. Um, when I was introduced to him I expanded  
24 (indicating) my hand.

25 Q. Loud voice.

B-1jb

Defense - DAVID DELGADO - direct

1651

1 A. When I was induced to him I expanded (indicating) my  
2 hand to embrace him.

3 MR. CANTOR: The record should reflect that the  
4 witness has put out his right hand, parallel to the floor  
5 in a hand- shake fashion.

6 THE COURT: So indicated.

7 Q. Please continue.

8 A. And he reject to give me his hand.

9 Q. I'm sorry.

10 A. Rejected to give me his hand.

11 Q. I see. Did he say anything to you?

12 A. Yes, he did.

13 Q. What did he say to you?

14 A. He asked me if Margie was my girlfriend and I told  
15 him, yes, she is and he told me --

16 Q. Loud voice and slowly.

17 A. He told me that if the day I disrespect her that I was  
18 going to have problems with him and his peoples. That she was  
19 not alone and she had back up from everybody at the party and  
20 that he was going to beat me up.

21 Q. Did that strike you as somewhat odd?

22 A. Yes, it did.

23 Q. Did you make any reply to that threat?

24 A. I told him okay. Whatever.

25 Q. And then there came a time that you mingled with the

B-1jb

Defense - DAVID DELGADO - direct

1652

1 other people?

2 A. Yes, I did.

3 Q. Talked to the other people?

4 A. Yes, I did.

5 Q. Drank alcoholic beverages?

6 A. Yes, yes.

7 Q. And there came a time once again when you found  
8 yourself confronted by Sosa, correct?

9 A. Correct.

10 Q. For the second time, correct?

11 A. Correct.

12 Q. And what, if anything, did he say to you on this  
13 second occasion?

14 A. He approached me again and he asked me where I was  
15 from and I told him I was from Brooklyn, and he told me remember  
16 where you at you, you in the Bronx you are not in Brooklyn and  
17 that if I ever disrespected Margie that he was going to fuck me  
18 up. That this was her friends. He knew her son and that she  
19 was not going -- he was not going to let anybody, an outsider,  
20 come in and disrespect his Peoples.

21 Q. And did that strike you as odd?

22 A. Yes, it did.

23 Q. Did you say anything in return?

24 A. Yes.

25 Q. what did you say?

B-1jb

Defense - DAVID DELGADO - direct

1653

1 A. I told him if, if I'm with her and she's accepting the  
2 person that I am it's because I have no problems -- she has no  
3 problems with me so it doesn't matter if, meaning like if I am  
4 from Brooklyn or from wherever, that she accepts me for the  
5 person that I am.

6 Q. Did he respond that that?

7 A. He just told me that he was keeping an eye close on  
8 me.

9 Q. He would keep a close eye on you?

10 A. Yes.

11 Q. Now, you heard witnesses testify that Sosa was  
12 speaking in a very loud voice during this party?

13 A. Yes.

14 Q. When he threatened you the first time and threatened  
15 you the second time describe the level of his voice.

16 A. He was real loud.

17 Q. And you heard people testifying in this courtroom that  
18 Sosa that evening, the word is gesticulating meaning moving his  
19 hands (indicating), flailing his hands in the air?

20 A. Yes.

21 Q. Did he do that on the two occasions that he made the  
22 threats to you?

23 MR. ROSENFELD: Objection.

24 THE COURT: I will allow it.

25 A. He was just pointing his finger (indicating) at my

B-1jb

Defense - DAVID DELGADO - direct

1654

1 hands while he was talking.

2 MR. CANTOR: The record will reflect the witness  
3 is taking his right hand, taking his index finger and  
4 pointing it back and forth.

5 THE COURT: So indicating.

6 Q. Okay. Now, did there come a time after these two  
7 threats that a girl who you had been introduced to as Gabriella,  
8 one of Carmen's Diaz's, daughter said something?

9 A. To me?

10 Q. No, to her mother?

11 A. Yes, she did.

12 Q. What did she say?

13 MR. ROSENFELD: Objection.

14 THE COURT: If he heard it, I will allow it.

15 Q. Please.

16 A. She stated --

17 Q. In a loud voice?

18 A. She stated that Sosa was acting up. He was being  
19 disrespectful, he was touching the females at the party that he  
20 didn't want him no more in the house.

21 Q. And was as a result of that Sosa brought -- taken from  
22 the party?

23 A. What?

24 Q. Was he removed from the party?

25 A. Yes, he was.

B-1jb

Defense - DAVID DELGADO - direct

1655

1 MR. ROSENFELD: Objection, leading.

2 Q. And when he was removed from the party?

3 MR. ROSENFELD: Your Honor.

4 THE COURT: Wait, wait, until I rule, Mr. Cantor.

5 MR. ROSENFELD: It's a lot of leading.

6 MR. CANTOR: Yes, your Honor.

7 THE COURT: The objection is overruled.

8 Q. And when he was taken from the party you remained at  
9 the party, correct?

10 A. Correct.

11 Q. Now, did there come a time that you and Margie went to  
12 Margie's apartment to get some cranberry juice because they had  
13 run out of juice?

14 A. Correct.

15 Q. When you went to get the cranberry juice was that  
16 after the second time you were threatened by Sosa?

17 A. After I was threatened twice then I left.

18 Q. Okay. You go to Margie's house, correct?

19 A. Correct.

20 Q. She gets the cranberry juice?

21 A. Yes.

22 Q. At that time as a result of what Sosa had been  
23 threatening you in a loud voice at a party where you knew no one  
24 other than Margie how were you feeling?

25 A. I was feeling feared. I had fear.

B-1jb



Defense - DAVID DELGADO - direct

1656

1 Q. Can I hear you again?

2 A. I was scared. I was scared.

3 Q. You were fearful?

4 A. Yes.

5 Q. As a result of that what did you do?

6 A. I put a knife in my pocket.

7 Q. Where did you get the knife?

8 A. At the kitchen in Margie's house.

9 Q. I can't hear you.

10 A. In Margie's house -- apartment.

11 Q. You see these two fingers here (indicating) index  
12 fingers I want you to show the jury how long the blade was of  
13 that knife?

14 A. Indicating.

15 MR. CANTOR: Indicating, approximately, three and  
16 a-half to four inches, your Honor.

17 THE COURT: So indicating.

18 Q. And did that knife have a handle?

19 A. Yes, it did.

20 Q. What color?

21 A. Black.

22 Q. And what did you do -- and what kind of knife was it,  
23 a steak knife, a dessert knife, what?

24 A. A steak knife.

25 Q. And then where did you put it?

B-1jb

Defense - DAVID DELGADO - direct

1657

1 A. In my right-hand pocket.

2 Q. Of your jeans?

3 A. Of my jeans.

4 Q. So you and Margie -- withdrawn.

5 When you took that knife what was your purpose in taking  
6 that knife?

7 MR. ROSENFELD: Objection.

8 THE COURT: Overruled.

9 A. For my protection?

10 Q. Protection from who?

11 A. From Sosa.

12 Q. So you and Margie returned to the party, correct?

13 A. Correct.

14 Q. Margie brought --

15 A. The cranberry juice.

16 Q. -- the cranberry juice?

17 A. Yes.

18 Q. You continued to talk and mingle amongst the guests?

19 A. Yes, I did.

20 Q. You had more to drink?

21 A. Yes, I did.

22 Q. And -- and there came a time that you were about to  
23 leave, correct?

24 A. Correct.

25 Q. Now, what kind of pants were you wearing?

B-1jb

Defense - DAVID DELGADO - direct

1658

1 A. He has blue fitted jeans.

2 Q. what kind of shirt?

3 A. I had a white tie.

4 Q. And did you have a jacket?

5 A. Yes, I did.

6 Q. what kind of jacket?

7 A. It was a hoodie windbreaker.

8 Q. what color?

9 A. Gray.

10 Q. You heard Detective Banker, the gentleman who  
11 testified here who was on three-quarters disability pay, you  
12 heard Detective Banker say that in your room in Brooklyn he put  
13 this jacket draped it over your back so that your handcuffs  
14 could not be seen; is that true?

15 MR. ROSENFELD: Objection to form of the  
16 question.

17 THE COURT: If he understands it he may answer  
18 it.

19 A. Yes, it's true.

20 Q. And it was a hoodie jacket windbreaker?

21 A. No, it wasn't.

22 Q. What was it?

23 A. It was a leather jacket.

24 Q. A leather jacket. Did it have a hood?

25 A. No, it didn't.

B-1jb

Defense - DAVID DELGADO - direct

1659

1 Q. Okay. what color leather, black --

2 A. Black.

3 Q. Black. Now, you are back at the apartment, you've  
4 told us you are drinking more, chatting more, mingling more.  
5 Did there come a time that you decided to go?

6 A. Yes.

7 MR. CANTOR: Judge, I want all of the exhibits  
8 from the party from apartment 3D.

9 (Whereupon the assistant district attorney  
10 complies.)

11 Q. And as you were leaving.

12 MR. CANTOR: Judge, I need this machine. It's  
13 the People's machine and I don't want to do anything of an  
14 obstructive or destructive act to it so I'm going to ask,  
15 your Honor, to direct the People to activate it. I know  
16 not of this machine.

17 THE COURT: Madam District Attorney, can you turn  
18 it on.

19 MR. ROSENFELD: It's been turned on, Judge.

20 THE COURT: Thank you.

21 Q. Okay. Now, take a look at what has been marked  
22 People's three in evidence. You had your coat on and Margie had  
23 her coat on?

24 A. Yes.

25 Q. And you were about to leave the party, correct?

B-1jb

Defense - DAVID DELGADO - direct

1660

1 A. Right.

2 Q. Did there come a third time that Sosa approached and  
3 confronted you?

4 A. He did.

5 Q. Were you standing or seated at that time?

6 A. I was standing.

7 Q. And is there anywhere in this picture that you can  
8 point to where you were standing?

9 A. I was in front of the table.

10 THE COURT: People's?

11 MR. CANTOR: I already said it for the record.

12 THE COURT: Please repeat.

13 MR. CANTOR: People's three in evidence.

14 THE COURT: People's three?

15 MR. CANTOR: Yeah, People's three.

16 THE COURT: Okay.

17 Q. Stand up please with his Honor's permission.

18 A. (Complies.)

19 Q. Now point to where you were standing with your coat.

20 A. I was standing right there (indicating).

21 Q. Just keep your finger there.

22 MR. CANTOR: He indicates mid-way of that table,  
23 which has a laced sort of cloth over it.

24 THE COURT: So indicating.

25 Q. And when you were standing there Sosa you said

B-1jb

Defense - DAVID DELGADO - direct

1661

1 confronted or approached you, correct?

2 A. Yes, yes he did.

3 Q. And were you face to face and chest to chest?

4 A. Yes.

5 MR. ROSENFELD: Your Honor, again, objection to  
6 leading.

7 Q. And was he --

8 THE COURT: I am allowing a little leeway.

9 Q. And was he -- was he -- withdrawn.  
10 Did he say or yell anything to you?

11 A. Yes, he did.

12 Q. What was that?

13 A. He asked me if I was leaving.

14 Q. And what did you say?

15 A. I told him yes.

16 Q. What did he do?

17 A. He asked me to remember what he had told me and I told  
18 him like what's your problem? Like why you keep coming towards  
19 me? Like what is it with you and he kept telling me --

20 Q. What did he say in a loud voice?

21 A. He told me to remember and he warned me again.

22 Q. Well, say it, don't characterize it. Say it. What  
23 did he say?

24 A. He told me that to remember to not disrespect Margie.  
25 That he was going to fuck me up. That she was not alone and he

B-1jb

Defense - DAVID DELGADO - direct

1662

1 was going to Brooklyn with Margie son to fuck me up.

2 Q. And what about his hand or hands, did there come a  
3 time as he was making that threat to you that his hand touched  
4 your body?

5 MR. ROSENFELD: Again, your Honor, objection,  
6 leading.

7 THE COURT: Yes.

8 Q. What did he do?

9 A. He was tapping my shoulder and my chest.

10 Q. Can you -- when you say tapping you mean punching?

11 A. Like going like this (indicating).

12 MR. ROSENFELD: Objection.

13 MR. CANTOR: The witness has taken his hand, his  
14 right hand and rather hardly -- in a hard fashion indented  
15 his left shoulder.

16 THE COURT: So indicating. The objection is  
17 overruled.

18 Q. Okay. Was it an open hand or was it a fist,  
19 Mr. Delgado?

20 A. It was an open hand.

21 MR. ROSENFELD: Objection, leading.

22 Q. Can you show us again?

23 A. He was going like this (indicating).

24 MR. CANTOR: Okay. The witness has gone like  
25 that with all four fingers, with the thumb tucked in

B-1jb

Defense - DAVID DELGADO - direct

1663

1 parallel to the floor and in a hard fashion has indented  
2 his left shoulder.

3 THE COURT: So indicating.

4 Q. You may be seated.

5 THE COURT: The objection is overruled.

6 Q. Yeah.

7 MR. CANTOR: May he be seated, Judge?

8 THE COURT: Yes.

9 Q. And was he making that motion to you or doing these  
10 things to you while he was threatening you for a third time?

11 MR. ROSENFELD: Objection, leading.

12 THE COURT: Overruled.

13 Q. You can tell us.

14 A. Yes.

15 Q. Were you scared and frightened at that moment?

16 MR. ROSENFELD: Objection, leading.

17 A. I --

18 MR. ROSENFELD: Objection.

19 THE COURT: I will allow it.

20 Q. Please.

21 A. I got nervous. I got nerve.

22 Q. More nervous?

23 A. I was scared.

24 Q. You got to in a loud voice describe your state of  
25 minds to this jury.

B-1jb



Defense - DAVID DELGADO - direct

1664

1 A. I got scared.

2 Q. Scared for what?

3 A. For my safety, my life.

4 Q. And as a result of being scared for your life what, if  
5 anything, did you do?

6 A. I just turned my back towards him.

7 Q. Yes.

8 A. Because Margie was already talking to one of her  
9 friends and as soon as I turned my back he just grabbed me.

10 Q. From where?

11 A. From my shoulder (indicating) and just pulled me  
12 towards (indicating) him.

13 Q. So he pulled you towards him, that means your back was  
14 coming towards his front; is that correct?

15 A. Yes.

16 Q. And what did he do at that point?

17 A. He struck at me with his left hand.

18 Q. Struck you where?

19 A. Hit me between my neck and my face (indicating).

20 Q. Is that with a fist or open hands?

21 A. Fisted.

22 Q. How many times did he do that?

23 A. At that point he hit me one time.

24 Q. What happened next?

25 A. That's when I was leaned -- I leaned towards him and

B-1jb

Defense - DAVID DELGADO - direct

1665

1 he struck me again.

2 Q. where?

3 A. He hit me in my face.

4 Q. with his fist or an open hand?

5 A. With his fist.

6 Q. And what did you do?

7 A. I put my hand in my pocket and I just started swinging  
8 at him.

9 Q. Now, when you put your hand in the pocket you grasped  
10 the knife, correct?

11 A. Correct.

12 Q. were you holding the knife by it's handle such as I am  
13 doing now (indicating)?

14 MR. CANTOR: And the record should reflect that I  
15 am holding my fist up.

16 Q. Or did you put the knife in your hand in another  
17 manner?

18 A. In another manner like this (indicating).

19 Q. You but it between your fingers?

20 A. No, I didn't.

21 Q. How?

22 A. It's like this (indicating) I put my hand in my pocket  
23 and I just pulled it out.

24 Q. Sir, sir, this is the knife (indicating), right, this  
25 is the handle (indicating), the rest is the blade. Take it,

B-1jb

Defense - DAVID DELGADO - direct

1666

1 please.

2 A. (Complies.)

3 Q. Sit down, please. Show the jury how you held the  
4 knife (indicating).

5 A. (Indicating).

6 Q. So, you held it by it's handle, gripping it as if you  
7 were gripping a ice cream cone (indicating)?

8 A. Yes.

9 Q. And what did you do hold, that hold that -- what did  
10 you do with that knife as you were gripping it by its handle in  
11 the fashion of holding an ice cream cone?

12 A. I just started swinging up (indicating).

13 Q. Now, now, do you remember seeing the videotape when  
14 you were being interrogated by an assistant district attorney on  
15 videotape; do you remember seeing it?

16 A. Yes.

17 Q. And you told the assistant district attorney that you  
18 had blacked out during the time that you were striking this man  
19 with the knife.

20 A. Yes, I did.

21 Q. And is that a fact?

22 A. Yes, it is a fact.

23 Q. Do you even remember how many times you were swinging  
24 it?

25 A. No.

B-1jb

Defense - DAVID DELGADO - direct

1667

1 Q. Do you recall what portion of his body, he being Sosa,  
2 you were swinging it at?

3 A. At that point, no.

4 Q. And there came a time, if you know, where was Margie  
5 during this period of time?

6 A. I believe she was behind me.

7 Q. But you don't know?

8 A. I don't know.

9 Q. You don't know how many times you struck the man.

10 A. No, I don't.

11 THE COURT: What was that answer?

12 MR. CANTOR: No, I couldn't (sic.)

13 Q. In any event there came a time after while you were  
14 blacked out and striking at the man. You don't even remember  
15 what portion of his body you were striking?

16 A. No.

17 Q. He was standing?

18 A. Yes, he was.

19 Q. You were standing?

20 A. Yes.

21 Q. Did there come a time when you finished striking and  
22 you left the apartment?

23 A. We fell together.

24 Q. You and Sosa fell on where together?

25 A. On the couch.

B-1jb

Defense - DAVID DELGADO - direct

1668

1 Q. Do you see that couch in People's three?

2 A. Yes.

3 Q. Can you point to where you and he fell. Stand up with  
4 his honors permission and point to it.

5 A. (Indicating).

6 MR. CANTOR: He is pointing as one faces the  
7 couch, the left most cushion in the upper left-hand corner  
8 of such.

9 THE COURT: So indicating.

10 Q. Please sit down. What happened as -- what did you do  
11 at that point?

12 A. I leaned back, I got up and I just ran out the  
13 apartment.

14 Q. And when you ran out of the apartment did you run down  
15 a hallway?

16 A. Yes, I did.

17 Q. This was the hallway that you ran down?

18 A. Yes.

19 Q. And right over here on the side (indicating), the  
20 right side is the apartment door to 3D?

21 A. Yes.

22 THE COURT: That is People's?

23 MR. CANTOR: This is People's two in evidence,  
24 Judge.

25 THE COURT: All right. Please continue.

B-ljb

Defense - DAVID DELGADO - direct

1669

1 Q. And there come a time when someone caught up to you?

2 A. Yes.

3 Q. Do you remember the name of that person?

4 A. It was Margie.

5 Q. Okay. Well, did there come a time that someone other  
6 than Margie placed her hands-on your person?

7 MR. ROSENFELD: Objection, leading.

8 THE COURT: I will allow it.

9 Q. Please.

10 A. Melissa tried to grab me.

11 Q. And where -- was she able to grab any portion of your  
12 body?

13 A. No, she couldn't touch me.

14 Q. She couldn't?

15 A. She couldn't, no.

16 Q. What did you do?

17 A. I was just running.

18 Q. I see. And?

19 A. To --

20 Q. And when you ran down the hallway there was an  
21 elevator and stairway on that floor, correct?

22 A. Correct.

23 Q. How did you get down?

24 A. I took the stairway.

25 Q. And you're now outside?

B-1jb

Defense - DAVID DELGADO - direct

1670

1 A. Yes.

2 Q. And did there come a time when you were outside that  
3 you saw Margie out there?

4 A. After I ran, yes.

5 Q. And did you give her certain items?

6 A. Yes, I did.

7 Q. What did you give her?

8 A. I gave her, her cell phone and her keys.

9 Q. And where did you go -- withdrawn.

10 What means of transportation did you take?

11 A. I took a cab.

12 Q. And where did you go?

13 A. To Brooklyn.

14 Q. That's where you live?

15 A. Yes.

16 Q. Do you know what happened to the knife?

17 A. No, I don't.

18 Q. Can you describe, as you were running down the  
19 hallway, down the stairs and outside your state of mind?

20 A. I was nervous.

21 Q. What else?

22 A. I was feared, I was shocked.

23 Q. Did you know that the man was dead or about to die?

24 A. No, I didn't.

25 Q. And you went home?

B-1jb

Defense - DAVID DELGADO - direct

1671

1 A. Yes, I did.

2 Q. And that was in the early morning of December 25th,  
3 Christmas Day '09, correct?

4 A. Correct.

5 Q. At that time was your mother and family living in  
6 Puerto Rico?

7 A. Yes.

8 Q. Did you go to Puerto Rico?

9 A. No.

10 Q. You went to your house, to your apartment?

11 A. Yes.

12 Q. And the next day the police officers came to your  
13 apartment and arrested you?

14 A. Yes.

15 Q. Handcuffed you inside your apartment?

16 A. And he walked in.

17 Q. He walked in, were you handcuffed?

18 A. Yeah.

19 Q. By the police officer?

20 A. Yes.

21 Q. Inside your apartment?

22 A. Yes.

23 Q. Now, it would be obvious -- withdrawn.

24 would it be a fair statement to say that after the stabbing  
25 was concluded you were dizzy and discombobulated and afraid and

B-1jb



Defense - DAVID DELGADO - direct

1672

1 scared and that your mind was not in its right place?

2 MR. ROSENFELD: Objection.

3 THE COURT: Sustained.

4 Q. Describe your mind as you were running down the  
5 hallway, down the stairs, down the street, in the cab to  
6 Brooklyn, your state of mindful will you describe it?

7 A. I was just blank. I couldn't even focus. I was just  
8 running, running and I just stopped for a moment when Margie  
9 called me. I gave her what I gave her and I just kept running.  
10 My -- I was just nervous. I was just --

11 Q. Were you frighten?

12 A. I was frightened.

13 (Continues next page.)

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B-1jb

## Delgado - Defendant - Direct

1 CONTINUED DIRECT EXAMINATION BY

2 MR. CANTOR:

3 MR. ROSENFELD: Objection.

4 THE COURT: As to leading, yes.

5 Q. I want you to fully, amply describe your state of mind  
6 to this jury.

7 You are running down the hallway, down the steps  
8 outside and in the cab. Describe your state of mind.

9 MR. ROSENFELD: Objection. Asked and answered.

10 THE COURT: It's already been asked, but I will  
11 allow him to continue on that.

12 Q. Please, Mr. Delgado.

13 A. I was frightened. I was nervous. I was just scared  
14 for my life. I just kept running. I just kept running.

15 Q. You didn't go to Puerto Rico to hide in your mother's  
16 house, did you?

17 A. No.

18 Q. The police found you at home the next day?

19 A. Yes.

20 Q. And you fully cooperated with them?

21 A. Yes.

22 Q. And when they gave you your Miranda rights, you waived  
23 those, gave them up, correct?

24 In other words, when they told you had a right to an  
25 attorney do you understand, you have the right to remain silent

## Delgado - Defendant - Direct

1 do you understand, if you cannot afford an attorney one will be  
2 provided without cost, do you understand, things of that nature,  
3 you told them you that you understood?

4 A. I understood.

5 Q. When they asked you whether or not after having  
6 received those rights would you be willing to make a statement  
7 and you said yes?

8 A. I did the statement first, then they read me my rights.

9 Q. Are you saying that the statement which consists of two  
10 blue pages that's in your handwriting, right?

11 A. Yes.

12 Q. That's People's Number 14?

13 A. Yes.

14 Q. That was given to you by Detective Banker, correct?

15 A. Correct.

16 Q. You're saying you wrote out the statement before Banker  
17 gave you your Miranda warnings?

18 A. Correct.

19 Q. And then after you had written it out, you gave the  
20 statement, the two pages to Banker, correct?

21 A. Correct.

22 Q. And it was only then that he read you your Miranda  
23 rights?

24 A. Correct.

25 Q. And eventually the assistant district attorney came?

## Delgado - Defendant - Direct

1 A. Correct.

2 Q. She warned you of your Miranda rights?

3 A. Correct.

4 Q. You waived them, gave them up?

5 A. Yes.

6 Q. You answered each and every question she put to you to  
7 the best of your ability?

8 A. Correct.

9 Q. She never asked you, did she, the assistant district  
10 attorney, for a description of the knife, did she?

11 MR. ROSENFIELD: Objection.

12 THE COURT: I will allow it.

13 Q. Did she?

14 A. Yes, she did.

15 Q. Did you tell her?

16 A. Yes, I did.

17 Q. What did you tell her?

18 A. It was a black knife, a steak knife.

19 Q. But you don't know where in your travels you had  
20 discarded it given your state of mind?

21 A. I don't remember.

22 Q. I can't hear you.

23 A. Ask me the question again.

24 Q. You don't know where you discarded it given your state  
25 of mind?

## Delgado - Defendant - Direct

1 A. Yes. I don't.

2 MR. ROSENFELD: Objection.

3 THE COURT: Sustained.

4 Q. Why is it that you don't recall where you discarded it?

5 A. I was just --

6 Q. I can't hear you.

7 A. I wasn't focused.

8 Q. You were what?

9 A. I wasn't thinking.

10 Q. What was your state of mind when you discarded it?

11 A. I was nervous.

12 Q. Were you scared?

13 A. I was nervous. I wasn't focusing on what I was doing.

14 Q. You were nervous from the events of the party?

15 A. Yes.

16 Q. You've waited how long for your day in court,

17 Mr. Delgado?

18 MR. ROSENFELD: Objection.

19 THE COURT: Sustained.

20 Q. You have in this case entered a plea of not guilty,

21 correct?

22 MR. ROSENFELD: Objection.

23 THE COURT: Subject to connection.

24 A. Not guilty, yes.

25 Q. And you're testifying now to the best of your ability

**Delgado - Defendant - Cross**

1 to the truth, the whole truth and nothing but the truth so help  
2 you God?

3 MR. ROSENFELD: Objection.

4 THE COURT: I will allow it.

5 A. Yes.

6 MR. CANTOR: I've concluded my direct examination.

7 THE COURT: Thank you, Mr. Cantor.

8 MR. CANTOR: People's witness.

9 THE COURT: Madam forelady, ladies and gentlemen  
10 of the jury, the jury will now take a five minute break.  
11 If anybody wishes to use the facilities, now is the time to  
12 do so. Be back in your seats in five minutes.

13 (Jurors leave the courtroom.)

14 (A recess is taken.)

15 COURT OFFICER: Jury entering.

16 (Jurors enter the courtroom.)

17 THE COURT: All right. We are all in place. Mr.  
18 DA, your witness.

19 MR. ROSENFELD: Thank you, Judge.

20 CROSS EXAMINATION BY

21 MR. ROSENFELD:

22 Q. Mr. Delgado, before Mr. Cantor asked you about your  
23 past abuse and you told him about what happened at ages 14, 20  
24 and 32, that must have been very difficult to tell people and  
25 talk to the jury about that, right?

## Delgado - Defendant - Cross

1 A. Yes.

2 Q. I noticed you were crying as you said that, right?

3 A. Yes.

4 Q. Very emotional about it?

5 A. Yes, I did.

6 Q. The day after you were arrested, you spoke to  
7 detectives about what happened in the apartment, right?

8 A. Yes, I did.

9 Q. You realized you just killed a man, right?

10 A. Yes.

11 Q. And I didn't see you crying in the video? You weren't  
12 upset then, right? The day after?

13 A. No.

14 Q. No. But you realized when they arrested you that they  
15 were arresting you for murder, right?

16 A. Yes.

17 Q. You had killed someone?

18 A. Yes.

19 Q. And when the detective arrested you and took you down  
20 to his car, you were sitting in the car and you made a statement  
21 to him, right?

22 A. I did.

23 Q. Okay. The statement was yo, that guy kept fucking with  
24 me all night. He was drunk. They took him outside and when he  
25 came back he grabbed my arm. I saw a knife on the table and

## Delgado - Defendant - Cross

1 grab it and swung at him. The people in the party grabbed me  
2 then I ran.

3 That's what you said to the detective, right?

4 A. I did, yes.

5 Q. Were you crying when you said that to him?

6 A. No.

7 Q. And you said that he grabbed my arm, right? That's  
8 what you told the detective?

9 A. Yes, I did.

10 Q. You didn't mention anything about being struck in the  
11 neck, right?

12 A. No, I didn't.

13 Q. Okay. And you say you saw a knife on the table when he  
14 grabbed your arm, right? That's what you told the detective?

15 MR. CANTOR: Objection. He said he grabbed the  
16 knife from the table.

17 MR. ROSENFELD: No. He said I saw a knife on the  
18 table.

19 THE COURT: Wait. Let me rule.

20 The objection is overruled.

21 Q. You said I saw a knife on the table and grabbed it and  
22 swung at him, right?

23 A. Yes, I did.

24 Q. You didn't say anything about having the knife in your  
25 pocket to the detective when you were first arrested, right?



## Delgado - Defendant - Cross

1 A. No.

2 Q. You also said the people in the party grabbed me,  
3 right?

4 A. Yes.

5 Q. Okay. That's not what happened. You ran out you said?

6 A. Yes, I did.

7 Q. Okay. So you weren't telling the truth to the  
8 detective at that point?

9 A. I told the truth.

10 Q. Okay. That's what you said in the car was the truth?

11 A. I was confused at the moment. I was -- my state of  
12 mind wasn't clear at the moment.

13 Q. Well, what wasn't clear at the moment? You were  
14 sitting in the police car, right?

15 A. Yes.

16 Q. And the detective wasn't saying anything to you and you  
17 just said this to the detective, right?

18 A. An officer asked me what happened.

19 Q. Okay. He did?

20 A. Not him exactly, another officer.

21 Q. Oh, another officer asked you what happened, okay.  
22 Then you told him this statement, right? Is there anything in  
23 here that you didn't say?

24 A. I just said what came out of my mouth at that point.  
25 That's what I said.

**Delgado - Defendant - Cross**

1 Q. Okay. You hadn't had time to think much about it,  
2 right?

3 A. No, didn't.

4 Q. Were you surprised they came to your apartment and  
5 arrested you?

6 A. I was surprised.

7 Q. You hadn't called 911 or anything, right?

8 A. No.

9 Q. In fact, you told us in the video that you called  
10 Margie afterwards, right?

11 A. Yes.

12 Q. Is that true?

13 A. Yes.

14 Q. And when you called Margie, when was that, after the  
15 party?

16 A. She was in the precinct.

17 Q. Yeah.

18 A. When I called her.

19 Q. On her cell phone?

20 A. Yes.

21 Q. Okay, so that would have been just a few hours after  
22 the party, right?

23 A. The next day.

24 Q. The morning?

25 A. Hours, yes.

## Delgado - Defendant - Cross

1 Q. Yeah, in the morning, and you had that conversation  
2 with her that you told us in the video, right?

3 A. Yes.

4 Q. You were concerned they were going to arrest her?

5 A. Yes.

6 Q. And didn't you say you didn't know the guy was dead,  
7 right?

8 A. Yes, I didn't know.

9 Q. But then she told you that he was dead?

10 A. Yes, she did.

11 Q. Isn't it true you never had a conversation with Margie?

12 A. What?

13 Q. You never had that conversation with Margie?

14 A. I called her.

15 Q. But you never had a conversation with her?

16 A. A direct conversation?

17 Q. Yeah.

18 A. All she was asking me questions like what happened and  
19 I told her what happened and she told me what happened between  
20 you and Sosa and I was like I don't know and she told me he died  
21 so I got nervous. I hung the phone up.

22 Q. Okay. But you heard Margie testify the other day,  
23 right?

24 A. Yes, I did.

25 Q. She never had a conversation with you?

## Delgado - Defendant - Cross

1 A. I guess she was nervous.

2 Q. She was nervous?

3 A. I guess.

4 Q. When she was on the witness stand?

5 A. I guess.

6 Q. So after you had this conversation with Margie you knew  
7 she was in the precinct the morning of December 25, 2009 -- let  
8 me finish my question -- you just stayed in your house the rest  
9 of the day, right?

10 A. Yes. I stood in my house.

11 Q. All -- Christmas Day was December 25, 2009, right?

12 A. Yes. I stood in my house.

13 Q. Did you go out in the evening, Christmas night?

14 A. I took a walk and I came back.

15 Q. Okay. And then you went to sleep that night?

16 A. Yes, I did.

17 Q. Okay. You woke up the next morning?

18 A. Yes, I did.

19 Q. Okay. You weren't crying the next morning, were you?

20 A. No, I wasn't.

21 Q. So the next morning you woke up. What did you do  
22 December 26, 2009?

23 A. I was calling my family letting them know what  
24 happened.

25 Q. You what?

## Delgado - Defendant - Cross

1 A. Calling my family letting them know what just happened.

2 Q. You called your family where?

3 A. In Puerto Rico.

4 Q. What did you tell them?

5 A. I told them what happened.

6 Q. Okay. Then what?

7 A. And they was just talking to me, telling me like what  
8 is going to happen now. I was like I don't know what is going  
9 to happen now, if they are going to come get me or I'm going to  
10 turn myself in.

11 Q. So you told them there was a choice, either you were  
12 going to turn yourself in or the police were going to come get  
13 you?

14 A. Yeah, because I was talking with them at that time.

15 Q. You hung up with them, then what did you do?

16 A. I was in my neighbor's room and that's when my landlord  
17 came and he called out my name. He called me, Littles --  
18 because that is what they used to call me when I was younger --  
19 and when I opened the door, all I saw was a gun to my face right  
20 there and he just told me put your hands on your head. I put my  
21 hands on my head. I turned around, he handcuffed me and took me  
22 out of the apartment. They placed me in the stairwell and they  
23 went in my room.

24 Q. Okay. And so between the time you left the apartment  
25 and the morning of December 26, 2009, you never tried to turn

## Delgado - Defendant - Cross

1 yourself in right?

2 A. I didn't know what had happened. I didn't know if he  
3 was dead or not.

4 Q. I see, but didn't you tell us a minute ago that Margie  
5 told you that he died?

6 A. I was confused. I didn't understand what you said.

7 Q. Don't be confused. You just told us in the morning  
8 when Margie was at the precinct she told you the guy died.

9 A. It wasn't in the morning. It was at nighttime.

10 Q. Okay, nighttime of December 25, 2009, you're saying  
11 Margie told you the guy died, right?

12 A. Yes.

13 Q. You realized you were the one that stabbed him, there  
14 was no question?

15 A. Yes.

16 Q. Did you try to turn yourself in on December 25, 2009?

17 A. I was confused that day.

18 Q. That's not my question?

19 A. No, I didn't.

20 Q. Okay. What were you confused about?

21 A. With what was going on.

22 Q. Tell me.

23 A. The situation.

24 Q. You've used the word confused a few times. There's no  
25 doubt in your mind that you stabbed Sosa, right?

**Delgado - Defendant - Cross**

1 A. There's no doubt.

2 Q. You're not confused about that?

3 A. No.

4 Q. And there is no doubt in your mind that you ran out of  
5 the apartment and got rid of the knife and went home, right,  
6 after the party, right?

7 A. No.

8 Q. So you're not confused about that?

9 A. I didn't get rid of the knife. I just -- I left the  
10 knife at the party.

11 Q. You left the knife?

12 A. I assume that the knife dropped and I just left.

13 Q. Okay, you assume, but you don't know where the knife  
14 was?

15 A. Yeah, I don't.

16 Q. Because the -- if the knife wasn't found inside of the  
17 apartment or the hallway, it was somewhere else, right? You  
18 don't know?

19 A. I don't know.

20 Q. Okay. So you're not confused about killing Sosa.  
21 You're not confused that you fled from the party. You're not  
22 confused that you got in the cab and went to Brooklyn, right?

23 A. No.

24 Q. And you're not confused that you didn't try to call 911  
25 right after the party?

## Delgado - Defendant - Cross

1 A. No.

2 Q. Okay. You said when you ran out of the party you were  
3 scared for your life?

4 A. Yes, I was.

5 Q. Well, when you ran out of party was anyone chasing you?  
6 Yes or no?

7 A. I was -- no.

8 Q. Okay. You ran down the stairwell and went outside,  
9 right? You were free at that point, right?

10 A. Yes.

11 Q. No one was chasing you at that moment?

12 A. No.

13 Q. So you weren't scared for your life at that moment?

14 A. Yes, I was.

15 Q. Why were you scared for your life when you were  
16 standing outside of the apartment after you stabbed Sosa?

17 A. I was around a lot of people that I don't know. I  
18 don't associate with those people and he was threatening me so  
19 much that I even spoke to his peoples about it and they just  
20 told me don't worry about it, so --

21 MR. CANTOR: I would like him to finish the  
22 answer.

23 A. And they told me don't worry about it, so, of course, I  
24 got nervous. Of course I got scared for my safety.

25 Q. Let's back up. Now I'm confused. You ran out of the



## Delgado - Defendant - Cross

1 party. You're standing outside by yourself, right?

2 A. Yes.

3 Q. No one was chasing you?

4 A. Margie approached me at the time.

5 Q. Right. Margie came up to you and that's when you gave  
6 her back cell phone and keys?

7 A. Yes.

8 Q. Other than Margie, there were no other people around  
9 you at that point?

10 A. No.

11 Q. You were free? You were not under arrest?

12 A. No.

13 Q. No one was chasing?

14 A. Not that I know of, no.

15 Q. Did you see anybody chasing you while you were outside  
16 of the apartment?

17 A. No.

18 Q. Right after the stabbing, right?

19 A. No.

20 Q. Why were you afraid for your life when you stood out of  
21 the apartment when no one was chasing you?

22 A. Margie stopped me and said give me my cell phone and  
23 keys and I kept running after that.

24 Q. Did Margie threaten you?

25 A. No.

**Delgado - Defendant - Cross**

1 Q. You indicated you were scared for your life. What made  
2 you scared for your life at that moment?

3 A. Because of people at the party.

4 Q. Were they outside chasing you?

5 A. They wasn't outside, but I'm thinking they were coming  
6 so that's why I ran.

7 Q. Did you see them?

8 A. They charged me at that moment when I was in the party  
9 before I left the apartment, I was charged.

10 Q. Mr. Delgado, I'm trying to be specific in terms of the  
11 time and place. I'm talking when you were outside.

12 MR. CANTOR: Judge, I think we can do it without  
13 the instructions.

14 THE COURT: Overruled.

15 Q. I'm talking about when you were outside by yourself  
16 when Margie came up. Were any people from the party chasing you  
17 outside?

18 A. No.

19 Q. And you say you then after giving Margie back her cell  
20 phone and keys you went and called, hailed a cab?

21 A. Yes, I did.

22 Q. You got in the cab and went to Brooklyn?

23 A. Yes, I did.

24 Q. Okay. How much did it cost you?

25 A. Sixty dollars.

## Delgado - Defendant - Cross

1 Q. Okay. You had money on you, right?

2 A. Yes.

3 Q. You didn't try to flag down a police officer, did you?

4 A. No, I didn't.

5 Q. You got back to your apartment that evening. You  
6 didn't call the police department, did you?

7 A. No, I didn't.

8 Q. You called Margie?

9 A. At that point, no.

10 Q. I'm talking about -- sorry. When you first got back,  
11 it would have been the late morning right of December 25th?

12 A. It was like four or five in the morning.

13 Q. How long did it take you to go by cab from where the  
14 party was to Brooklyn?

15 A. Took like 45 minutes, an hour almost an hour.

16 Q. Well, if the incident happened a little bit after two  
17 in the morning, what time would you say you got to your  
18 apartment then?

19 A. Like three, almost four.

20 Q. Three or four. And you did you go to sleep at that  
21 point?

22 A. No, I didn't.

23 Q. You changed clothes?

24 A. I took a shower.

25 Q. You had blood on your hands, right?

## Delgado - Defendant - Cross

1 A. Yes, I did.

2 Q. You washed the blood off your hands?

3 A. Yes.

4 Q. Okay, and then you went to sleep?

5 A. I tried, but I couldn't.

6 Q. Okay. So what did you do for the rest of the morning  
7 of December 25, 2009?

8 A. I just sat on my bed to think.

9 Q. To think. You told us during direct examination that  
10 you were on some sort of medication on December of 2009?

11 A. Yes, I was.

12 Q. And what were you taking?

13 A. I was taking Abilify.

14 Q. Spell it.

15 A. I'm not too good with spelling.

16 Q. And how long had you been taking Abilify?

17 A. I was taking it for approximately, for like four or  
18 five months.

19 Q. Okay. And is that over-the-counter? You get it at a  
20 pharmacy or someone prescribes it?

21 A. From a pharmacist.

22 Q. You get a prescription for that?

23 A. Yes.

24 Q. It was just four or five months, so it would have been  
25 August to July?

**Delgado - Defendant - Cross**

1           A.    From July or June.        had got released and I was  
2   referred to a psych and when I saw the psych he proscribed those  
3   medications.

4           Q.    Do you have the name of the doctor?

5           A.    I don't remember.   I don't remember.

6           Q.    You don't remember?

7           A.    I don't remember.

8           Q.    Do you have the prescription?   I would like to see it.

9           A.    I don't have the prescription on me.

10          Q.    Oh.   You have it somewhere?

11          A.    No,    don't.

12          Q.    You don't have a prescription?   You don't know the name  
13   of the psychiatrist who gave it to you?   You said that you took  
14   Abilify for four or five months.   Is that once a day; twice a  
15   day?

16          A.    That was once and I think it was once a day and I was  
17   drinking Depakote at the time.

18          Q.    You were drinking something else?

19          A.    Yes.

20          Q.    Depakote?

21          A.    Yes.

22          Q.    Was that over-the-counter?

23          A.    Yes.

24          Q.    Okay.   You just went to the pharmacy and you would  
25   order that and drink it?

## Delgado - Defendant - Cross

1 A. I would take my pills, yes.

2 Q. Okay.

3 MR. CANTOR: I would take my --

4 THE WITNESS: Pills.

5 Q. Pills. Wait. Is this Depakote a drink or pills?

6 A. They are pills.

7 Q. Pills, my mistake. That is not a prescription?

8 A. Yes, they are.

9 Q. So Depakote and Abilify were both prescriptions?

10 A. Yes.

11 Q. How long had you been taking Depakote?

12 A. Three or four months.

13 Q. Three or four months?

14 A. Yes.

15 Q. Did someone give you a prescription for that?

16 A. Yes, the psych.

17 Q. You don't know his name?

18 A. I don't remember his name.

19 Q. Do you have a prescription for the Depakote?

20 A. No, I don't.

21 Q. You also smoke cigarettes, right?

22 A. Yes, I do.

23 Q. You've been smoking cigarettes for a long time, right?

24 A. Yes.

25 Q. And you told us before that -- are you saying you were

**Delgado - Defendant - Cross**

1 taking medication for your nerves or for mental problems?

2 A. For depression and my mood swings.

3 Q. Okay. When you first were examined after you were  
4 arrested at New York City Corrections you remember being asked  
5 by them whether or not you were taking any medication for nerves  
6 or mental problems?

7 A. Yes.

8 Q. Did you tell them no?

9 A. I don't recall.

10 Q. Would something refresh your recollection?

11 A. May be, I don't know.

12 MR. ROSENFELD: Your Honor, I would ask this paper  
13 be handed to the defendant and I'm going to point out --

14 MR. CANTOR: I would ask it be marked.

15 THE COURT: People's number -- for identification.

16 MR. ROSENFELD: Peoples Number 18 for  
17 identification.

18 THE COURT: So deemed.

19 Q. And pointing there on Number 22?

20 MR. CANTOR: Can I look at it, your Honor?

21 I think we are going to need the reporter. I  
22 think this is glaring and should be brought to your  
23 attention.

24 MR. ROSENFELD: Objection, your Honor, to the  
25 colloquy. That is improper.

## Delgado - Defendant - Cross

1 THE COURT: Yes. Yes.

2 MR. CANTOR: Judge, something ought to be brought  
3 to your attention.

4 THE COURT: Okay. All right. Bring it to my  
5 attention.

6 (Whereupon, there is a discussion held off the  
7 record, at the bench, among the Court, Mr. Cantor, and the  
8 Assistant District Attorney.)

9 THE COURT: Mr. District Attorney, please  
10 continue.

11 MR. ROSENFELD: Just one second, your Honor.

12 (Pause in the proceedings.)

13 MR. ROSENFELD: This was given to the defendant, I  
14 believe, to look at.

15 THE COURT: Do you wish to focus his attention to  
16 anything in particular?

17 MR. ROSENFELD: Yes, to Number 22.

18 THE COURT: Number 22.

19 Q. Let us know when you had an opportunity to look at  
20 Number 22. Does that refresh your recollection as to whether  
21 you were asked whether you took any medications and you  
22 responded no?

23 MR. CANTOR: By whom? Asked by whom, your Honor?  
24 I object.

25 THE COURT: Overruled.



**Delgado - Defendant - Cross**

1 Q. By a person.

2 MR. CANTOR: Can we find out by whom?

3 THE COURT: Overruled.

4 A. My mind wasn't clear that day.

5 Q. The day they were interviewing you?

6 A. Yes.

7 MR. CANTOR: Who is they?

8 Q. Who was interviewing you?

9 A. I guess it was in the clinic.

10 Q. At Rikers?

11 A. Yes.

12 Q. Okay. All right. Do you recall on that day -- sorry.

13 Earlier you told us that when you were 14, I think it was 23 and  
14 32, that your father sexually assaulted you, right?

15 A. I was 8 and 9 and 10.

16 Q. Eight and nine, sorry, that your father sexually  
17 assaulted you?

18 MR. CANTOR: Eight, nine and ten he said.

19 Q. Do you recall being asked by someone in the clinic at  
20 Rikers Island on or about December 27, 2009, whether or not you  
21 had ever been assaulted sexually or physically and saying no?

22 A. I said no because I was ashamed.

23 Q. Okay. All right. But you told them you were not,  
24 right?

25 A. Yes.

**Delgado - Defendant - Cross**

Q. On. You also told us that -- I think Mr. Cantor had asked if you had attempted suicide?

A. Yes.

Q. You were being asked on December 27, 2009 by someone in the clinic have you tried to hurt or kill yourself and didn't you tell them no?

A. I told them no because I didn't want to go to M.O. House.

MR. CANTOR: To where?

THE WITNESS: An M.O. House.

A. M.O., like mental health house. I didn't want to be around them. I just wanted to go to population.

Q. And when you were talking to this person in the clinic on that day, you had a pretty long conversation with them, right?

A. With whom?

Q. The person in the clinic. They asked you a lot of questions?

A. I don't recall.

Q. Okay. And did they tell you that your thought process was logical?

A. I don't recall.

Q. And that your mood was euthymic, non-depressed?

A. I don't recall.

Q. You don't recall that either? Did you have any trouble

## Delgado - Defendant - Cross

1 communicating with the person that day when you were  
2 interviewed?

3 A. With whom?

4 Q. The person at the clinic, that's who I'm referring to.

5 A. I was in intake, so I had to go through that procedure.

6 Q. Okay. And Mr. Cantor directed your attention to some  
7 place called Cumberland?

8 A. Yes.

9 Q. You were there when?

10 A. I was there in June of 2009.

11 Q. 2009?

12 A. I was referred from parole.

13 Q. What?

14 MR. CANTOR: Objection, your Honor.

15 THE COURT: Objection is overruled.

16 Q. Please, just speak up. I couldn't hear you.

17 MR. CANTOR: I don't want to hear about that word,  
18 Judge, because you've ruled at a Sandoval hearing. That's  
19 why I'm objecting.

20 THE COURT: Overruled. Please continue.

21 MR. ROSENFIELD: We can have it read back. He  
22 looked down and said a word, something, and I asked what.

23 THE COURT: Well, he can either repeat it or we  
24 can have it read back.

25 MR. ROSENFIELD: Let's have it read back.

## Delgado - Defendant - Cross

1 MR. CANTOR: No, because it's contrary to your  
2 Sandoval ruling.

3 THE COURT: Overruled.

4 MR. CANTOR: Can we have a new question?

5 THE COURT: No. We are going to hear the rest of  
6 the answer that he said.

7 MR. CANTOR: I find that it violates your Sandoval  
8 ruling.

9 THE COURT: I'm going to allow it.

10 MR. CANTOR: Can it be done at the side bar,  
11 Judge?

12 THE COURT: No, but I will reserve for you  
13 anything that you wish to say later.

14 MR. CANTOR: Judge, what he had said is contrary  
15 to your Sandoval ruling.

16 THE COURT: All right. Thank you for that  
17 information.

18 Read back what he did say.

19 (Whereupon, the court reporter read back the  
20 above-requested testimony.)

21 MR. CANTOR: You see that, Judge. I'm moving for  
22 a mistrial.

23 THE COURT: As I indicated once before, ladies and  
24 gentlemen of the jury, the only charge against this  
25 gentlemen are the ones recited by Mr. Cantor.

## Delgado - Defendant - Cross

1                   You totally disregard anything about parole,  
2                   anything about procedures, anything about corrections. It  
3                   has nothing at all to do with this case. Be so instructed.

4                   MR. CANTOR: Yeah.

5                   THE COURT: Please continue.

6                   MR. CANTOR: You were forewarned. I move for  
7                   withdrawal of the jury and a mistrial.

8                   MR. ROSENFELD: Objection, your Honor.

9                   THE COURT: No. No. He's moving now for it and I  
10                  will --

11                  MR. CANTOR: You were forewarned by me that this  
12                  would violate Sandoval ruling and the DA did it  
13                  nonetheless, so you have my application.

14                  THE COURT: Your application is denied.

15                  MR. CANTOR: And my exception is noted.

16                  THE COURT: Done. You may continue.

17                  CONTINUED CROSS EXAMINATION BY

18                  MR. ROSENFELD:

19                  Q. You said around June of 2009 you were at the place  
20                  Mr. Cantor mentioned Cumberland, right?

21                  A. Yes.

22                  Q. And, by the way, did they ask you your date of birth?

23                  A. Yes.

24                  Q. Did you tell them it was July 18, 1970?

25                  A. No. That was a mistake by them.

## Delgado - Defendant - Cross

1 Q. Okay. And at that point were you taking medication?

2 A. No, I wasn't.

3 Q. And do you have any type of learning disability?

4 A. A little bit.

5 Q. A little bit?

6 A. Yeah.

7 Q. Well, were you asked by them at Cumberland if you ever  
8 been told that you have a learning disability? Didn't you tell  
9 them no?

10 A. I did tell them no.

11 Q. What?

12 A. I did tell them no.

13 Q. You told them no?

14 A. Yeah.

15 Q. Okay. And were you employed at that time?

16 A. No, I wasn't.

17 Q. You told us in the video that you worked in a laundry  
18 mall. When did you work in the laundry mall?

19 MR. CANTOR: Objection, Judge. He said he used to  
20 work in the laundry mall. He had been fired, so, you see,  
21 we have --

22 THE COURT: Thank you for your objection.

23 MR. ROSENFELD: Objection to colloquy.

24 THE COURT: The jury's recollection will control.

25 You may continue.

**Delgado - Defendant - Cross**

1 MR. CANTOR: I just hope he cites the evidence  
2 correctly.

3 MR. ROSENFELD: Objection, your Honor, to  
4 colloquy.

5 THE COURT: Yes. Correct.

6 Q. You may answer.

7 A. I worked there like around August, September.

8 Q. Of 2009?

9 A. 2009.

10 Q. Until when?

11 A. I only worked there for 90 days, I think it was.

12 Q. So you're saying around August of 2009 for 90 days,  
13 until September or October?

14 A. Like around there, yes.

15 Q. Where were you working before that?

16 A. I was incarcerated before that.

17 MR. CANTOR: Judge, I'm going to ask you to strike  
18 that and I'm going to ask you -- once again my adversary,  
19 Mr. Rosenfeld, is violating your Sandoval ruling.

20 MR. ROSENFELD: Your Honor, that's totally --

21 MR. CANTOR: That's what he --

22 MR. ROSENFELD: He answered. Objection.

23 THE COURT: Gentlemen, gentlemen, let's not carry  
24 on. Mr. Cantor --

25 MR. CANTOR: He's carrying on. He's yelling.

## Delgado - Defendant - Cross

1 THE COURT: I thank you for your objection. Your  
2 objection is overruled.

3 MR. CANTOR: You don't deem it a violation of your  
4 Sandoval ruling? It's worthy.

5 MR. ROSENFELD: Objection.

6 THE COURT: You know, everyone is speaking, but  
7 she's only taking down what I say, so you're all wasting  
8 your time, all right, but I will give you a chance to make  
9 a record, but first --

10 MR. CANTOR: Can we do that, Judge, because it's  
11 kind of important. You ruled on Sandoval --

12 MR. ROSENFELD: Objection to Sandoval.

13 THE COURT: Sit down, Mr. Cantor. Sit down,  
14 please.

15 MR. CANTOR: He violates continually.

16 MR. ROSENFELD: Objection.

17 MR. CANTOR: Objection, objection.

18 THE COURT: I implore you, please. The jury is to  
19 disregard that reference, all right.

20 MR. ROSENFELD: We will put on the record he stuck  
21 out his tongue and made a comment.

22 THE COURT: You didn't stick out your tongue out  
23 at me.

24 MR. CANTOR: No. I'm swallowing. I move my head  
25 and I'm being chastised by the DA. He really wants this



## Delgado - Defendant - Cross

1 conviction, Judge.

2 MR. ROSENFELD: Your Honor --

3 THE COURT: Mr. Cantor, please. What we want here  
4 is justice.

5 MR. CANTOR: Yes, an elusive commodity. That's we  
6 want. I'm suggesting that he's violating the Sandoval  
7 ruling.

8 THE COURT: There's no need to cast dispersion.

9 MR. CANTOR: Can we have a side bar, do you think?

10 THE COURT: No, not now.

11 MR. CANTOR: Are you offering an instruction to  
12 the jury to disregard because --

13 THE COURT: I did that. Didn't you hear me?

14 MR. CANTOR: I did. I would like it again because  
15 he violated it a second time.

16 MR. ROSENFELD: Objection, your Honor. This is  
17 improper. I did not violate anything. He knows that.

18 THE COURT: Don't argue, Mr. Rosenfeld.

19 The jury has been so instructed. Move on.

20 MR. ROSENFELD: I did not violate anything.

21 MR. CANTOR: Judge, he's speechifying, that's all  
22 he does.

23 THE COURT: Patience.

24 MR. ROSENFELD: I will do my best, Judge. I will  
25 try.

**Delgado - Defendant - Cross**

1 THE COURT: Fortitude.

2 MR. ROSENFELD: Fortitude. Thank you. I will do  
3 my best under the circumstances.

4 THE COURT: Mr. Cantor, that equally applies to  
5 you.

6 Let us move forward.

7 Q. And were you asked by the person at Cumberland--  
8 withdrawn. Sorry.

9 (Continued on the next page.)  
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25

1 Q You told us that in your past that your father  
2 sexually abused you. Did you ever report that to the police?

3 A No, I didn't.

4 Q Ever receive any treatment for it?

5 A At the time, no.

6 Q You said you attempted -- you told Mr. Cantor you  
7 attempted suicide in 1989 when you were 14?

8 A '91 -- '89, yeah.

9 Q When you were 14?

10 A Yes.

11 Q Was that reported to the police?

12 A The EMS, my moms called 911 and the EMS had came and  
13 took me to the hospital.

14 Q What happened?

15 A They left me there for observation.

16 MR. CANTOR: I can't hear you.

17 A They left me in the hospital for observation.

18 Q Then what happened?

19 A Then from there I was referred to a psych.

20 Q That was back in 1989?

21 A Yes.

22 Q Do you have any medical records for that?

23 A No.

24 Q That was, I think you said you drank painkillers,  
25 right?

1 A Yes.

2 Q And jumped in a river?

3 A I did.

4 Q Then eleven years later, age 25, you said you tried to  
5 hang yourself?

6 A Yes.

7 Q Using what?

8 A Um, a extension cord.

9 Q You wrapped it around your neck?

10 A I wrapped it around my neck. I put, how do I  
11 explain --

12 MR. CANTOR: I can't hear.

13 A Yes, I wrapped it around the neck. I wrapped it  
14 around the beam, cement beam, and I tried to hang myself.

15 Q You jumped off something?

16 A The chair.

17 Q What happened?

18 A Um, I was hanging.

19 Q So must have left quite a mark?

20 A It did.

21 Q What happened after that?

22 A Um, my mother walks in and she sees me and she just  
23 starts screaming, and my neighbors from my house, my cousins  
24 and they just ran into my house and they brung me down.

25 Q Do you want to show us the mark?

1 A I don't have a mark.

2 Q I thought -- I asked you if it left a mark, you said  
3 yes.

4 A At that time, yes.

5 Q But you have nothing now to show us, your neck, no  
6 mark there, right?

7 A No.

8 Q In 2007 at age 32, you told us you attempted suicide  
9 again by hanging yourself?

10 A Yes.

11 Q How did you try it the third time?

12 A The same way.

13 Q Have any marks on that?

14 A No.

15 Q Do you have any -- were you hospitalized?

16 A Yes, I was.

17 Q Do you have any medical records for that?

18 A That's in Puerto Rico. They have in Puerto Rico. I  
19 don't got no medical record here.

20 Q You have nothing here to show us?

21 A No.

22 Q You said you had a wife?

23 A Yes.

24 Q In Puerto Rico?

25 A Yes.

1 Q Just so I'm clear, what years were you living in  
2 Puerto Rico?

3 A I moved to Puerto Rico in '91 of December. 2005 I  
4 came back to New York.

5 Q To New York in 2005. You stayed in New York since  
6 then?

7 A No. I left 2007 back to Puerto Rico.

8 Q 2007. So you were in New York from 2005 to 2007.  
9 2007 you went back to Puerto Rico?

10 A Yes, I did.

11 Q When did you return to the United States?

12 A January of 2009.

13 MR. CANTOR: January when?

14 A 2009.

15 Q But you left your wife back in Puerto Rico?

16 A Yes, we were separated.

17 Q You said you had kids?

18 A Yes, I have kids.

19 Q Also in Puerto Rico?

20 A I have three in Puerto Rico and three here in New  
21 York.

22 MR. CANTOR: And three where?

23 A Here in New York.

24 Q So at some point you got married here in New York?

25 A No. They came from Puerto Rico to New York. Since I

1 been incarcerated, they came to New York.

2 Q Prior to 2009, were they in New York?

3 A No.

4 Q So you came back here in January 2009 and you went to  
5 live where?

6 A I stood my aunt's house.

7 Q Let's talk about meeting Margie. You said you met her  
8 at some point in 2009, right?

9 A Yes.

10 Q Where was that?

11 A At the Laundromat where I used to work.

12 Q You started dating her after that?

13 A No.

14 Q Tell us.

15 A She just come to the shop and we would just talk.

16 Q At some point, did you start dating her?

17 A Yes, I did.

18 Q When was that?

19 A Like a month and a half later.

20 Q So approximately what month are we talking about?

21 A Like September, November.

22 Q September?

23 A Like September.

24 Q And did you used to go visit her in the Bronx?

25 A Yes, I used to go.

1 Q How often?

2 A Every other day I used to go over there.

3 Q Because you weren't working at that time?

4 A At that time, I was working and I would go, and I just  
5 travel back to my house.

6 Q Did she ever come to Brooklyn to your place?

7 A She came one time.

8 Q When was that?

9 A I don't recall. I don't remember the date.

10 Q So between the time you met her and September October  
11 and December 25, 2009, approximately how many times had you  
12 visited Margie in the Bronx?

13 A Like fifteen, twenty times.

14 MR. CANTOR: How many?

15 A Like fifteen or twenty times.

16 Q Did you ever have any problem traveling from Brooklyn  
17 to the Bronx to see her?

18 A I used to take the train.

19 Q And when you come to the Bronx, would you stay in her  
20 apartment or was it just for an afternoon visit? What was it?

21 A In the beginning, I just -- I -- in the beginning I  
22 used to just visit, then after a while I would stay in the  
23 weekends.

24 Q She also had her son living with her, right?

25 A Yes, she did.



1 Q How was your relationship with her son?

2 A It was a good relationship.

3 Q Okay. So out of the fifteen or twenty times, there  
4 were times you would come at the beginning just for the day,  
5 but other times you told us you'd stay over there?

6 A Yes.

7 Q Around December 2009, during the times you visited her  
8 in that month, would you be staying over there?

9 A Yes.

10 Q How would you describe your relationship with Margie  
11 at that point?

12 A We had a good relationship.

13 Q What type of things would you do?

14 A We would go out. We would go out of state. We would  
15 go out to the movies. We would go out to eat and we just stay  
16 in the apartment.

17 Q What do you mean went out of state?

18 A Um, we went to Massachusetts to meet one of her  
19 friends and we just stood there for like two days, then we came  
20 back.

21 Q Then you said you went to the movies with her?

22 A We went out to eat.

23 Q You went out to eat?

24 A Yes.

25 Q Did you ever drink any beers during those times when

1 you guys would go out?

2 A No, I didn't.

3 Q Ever drink any liquor?

4 A No.

5 Q Why not?

6 A 'Cause at that time I wasn't in the mood to drink.

7 Q Okay. So now, let's go to December 25, 2009, what  
8 happened that day? How did that day start?

9 A Um, we woked up, we went out and we came back to the  
10 apartment. We ate, we took a shower, and we just went to the  
11 party.

12 Q Okay. So had you stayed over her apartment from the  
13 night before December 24, 2009?

14 A Yes, I did.

15 Q Had you spent December 24, 2009, with Margie?

16 A December 24th, yes.

17 Q What did you do that day, do you remember?

18 A We went out. We went to Manhattan.

19 Q What did you do in Manhattan?

20 A We were shopping.

21 Q Okay. Buying gifts and stuff?

22 A Clothes, gifts, stuff like that, for her family.

23 Q And so you stayed overnight December 24 -- I'm sorry.  
24 December -- that would be December 23rd into the 24th, right,  
25 the day of Christmas Eve? I think I misspoke.

1 A Yes.

2 Q So now, we're talking about the day of Christmas Eve,  
3 December 24th, 2009, you awoke and you were in Margie's house?

4 A Yes.

5 Q What did you do when you got up that day?

6 A We went out. We went to Manhattan. We ate, whatever.  
7 We came back. It was just -- just stood in her apartment until  
8 late.

9 Q Pretty normal day?

10 A It was a normal day.

11 Q Did you take any medications that day?

12 A I took my meds at 9 o'clock that night.

13 Q 9 o'clock the night of December 24?

14 A Yes.

15 Q What did you take?

16 A I took Abilify.

17 Q Abilify?

18 A Yes.

19 Q You said you'd been taking that medication regularly?

20 A I would take it regularly, yes.

21 Q I'm sorry?

22 A Yes.

23 Q Okay. And the purpose of taking the medication was to  
24 control whatever problems the medication was for?

25 A My depression, yes.

1 Q To control it?

2 A Yes.

3 Q All right. So comes Christmas Eve, December 24, 2009,  
4 you're at Margie's, you said you had something to eat?

5 A We ate something outside.

6 Q And then what happened?

7 A And we came back to the apartment.

8 Q About what time was that?

9 A Like around 8:30, around there. 7.

10 Q What did you do after that?

11 A We just stood in the apartment until like 10:30, 11,  
12 11:30, around there. That's when she decided to go to the  
13 party.

14 Q Up until that moment, had she mentioned anything about  
15 going to the party with you?

16 A She asked me, I told her I didn't want to go because I  
17 wasn't feeling right because I had called Puerto Rico, I spoke  
18 to my kids, I spoke to my mom.

19 Q I'm not asking --

20 MR. CANTOR: Judge, can he complete his answer?

21 MR. ROSENFELD: Objection.

22 MR. CANTOR: He should be afforded that courtesy.

23 THE COURT: Well, yes.

24 MR. CANTOR: Thank you.

25 MR. ROSENFELD: Objection.

1 THE COURT: The jury will disregard anything not  
2 responsive to the question.

3 Let him continue. Mr. District Attorney.

4 MR. CANTOR: Well, he was in the middle of the  
5 answer.

6 THE COURT: Yes, he was.

7 MR. CANTOR: So --

8 THE COURT: Does that question still stand?

9 MR. ROSENFELD: I'll withdraw.

10 MR. CANTOR: How can he withdraw the question  
11 when he's in the middle of answering it?

12 THE COURT: It's withdrawn.

13 MR. CANTOR: What with the answer that's only  
14 partial?

15 THE COURT: It's withdrawn. The jury will  
16 disregard.

17 MR. CANTOR: He has the right to complete it.

18 THE COURT: Thank you for your observation.

19 MR. CANTOR: He has an absolute right to complete  
20 it.

21 MR. ROSENFELD: Objection to this colloquy.

22 THE COURT: Yes, please continue.

23 MR. ROSENFELD: Thank you.

24 Q So you called Puerto Rico and you said you didn't feel  
25 right?

1 A Yes.

2 Q What does that mean, didn't feel right?

3 A I was feeling depressed.

4 Q But you decided to go out to the party anyway?

5 A At that moment, no.

6 Q Later on you decided, 11:30?

7 A Around 11:30, yes.

8 Q It was just you and Margie?

9 A Just me and Margie.

10 Q Did you bring anything with you from her apartment?

11 A No.

12 Q So you told us that you got to Carmen Diaz's  
13 apartment, right?

14 A Yes.

15 Q You came in and you were introduced to people?

16 A Yes.

17 Q And you told us you met Carmen Diaz one time before  
18 and Melissa Dempsey one time before that?

19 A Yes.

20 Q When was that? Do you remember when you met them or  
21 where?

22 A I don't recall. I know it was -- it was like a week  
23 or two weeks before the party, I think.

24 Q When you met Carmen Dempsey, what happened?

25 MR. CANTOR: It's Melissa Dempsey.

1 MR. ROSENFELD: Thank you, Mr. Cantor. I  
2 misspoke.

3 MR. CANTOR: Oh, he misspoke.

4 MR. ROSENFELD: Excuse me.

5 Q Go ahead.

6 A I was just introduced. They asked me where I was  
7 from, what part of Puerto Rico I was from, I told them. We  
8 just talked normal.

9 Q Melissa Dempsey, when did you meet?

10 A Like a week later. I don't really remember like that.

11 Q So you got to the party and you saw Melissa Dempsey  
12 and Carmen Diaz, right?

13 A Yes.

14 Q And a lot of other people?

15 A Yes.

16 Q What did you do when you went into the party?

17 A Um, we walked to the kitchen. We walked to the  
18 kitchen and I was introduced to Sosa, I was introduced to  
19 Mercedes and to the other party people that was at the party.

20 Q What about Alberto Vasquez, Tango?

21 A He was at the party, I was introduced to him.

22 Q Did he go into the kitchen to smoke?

23 A At this point, no.

24 Q You told us at the beginning Sosa came over to you in  
25 the beginning when you were introduced to him?

1 A Yes.

2 Q You told us I extended my hand to embrace him.

3 MR. CANTOR: Not to embrace him, to shake hands  
4 is what he said.

5 Q Did you use the word embrace earlier?

6 THE COURT: The jury will be the best  
7 recollection. You may continue.

8 Q Go ahead.

9 A Yes.

10 Q You said he rejected it, he rejected to give you his  
11 hand?

12 A His hand, yes.

13 Q He asked you some questions, if Margie was your  
14 girlfriend?

15 A Yes.

16 Q What did you tell him?

17 A I told him yes.

18 Q And he told you in sum and substance that if you  
19 disrespected her, you would have problems with his people,  
20 there's backup at the party and he would beat you?

21 A Yes.

22 Q That was in the kitchen?

23 A Yes, it was.

24 Q And your response to that was I told him okay -- I'm  
25 sorry. What was your exact response?



1 A I said okay. Whatever.

2 MR. CANTOR: I'm sorry?

3 A I told him okay. Whatever.

4 Q Okay. Whatever. So at this first time, he didn't  
5 have any weapon in his hand, did he?

6 A No.

7 Q This first time when he said these words, did he do  
8 anything to you?

9 A He was just -- go like (indicating) just point his  
10 finger at me.

11 Q Point his finger at you?

12 A Yes.

13 Q And said if you disrespected him --

14 A If I disrepsected --

15 MR. CANTOR: I can't hear.

16 A Yes, if I disrespected Margie.

17 Q So after you said I told him okay, whatever, what  
18 happened?

19 A He walked away.

20 Q Did you leave the party at that point?

21 A No.

22 Q What did you do?

23 A I stood in the kitchen, I took my jacket off and they  
24 offered me drinks.

25 Q You told us before you socialized?

1 A Yes, I did.

2 Q You drank?

3 A I did.

4 Q You smoked?

5 A Yes.

6 Q And Sosa had left the kitchen?

7 A Yes.

8 Q So was anything happening at that moment other than  
9 these things?

10 A At that moment, no. But further down the party.

11 Q I'm just talking about that moment.

12 A At that moment, no.

13 Q So once he left, there was no more threat to you,  
14 right?

15 A No.

16 Q He was in a different room?

17 A Yes.

18 Q And you didn't say to Margie let's go leave the party  
19 now, I'm scared?

20 A No.

21 Q Everything was back to normal?

22 A Everything was normal.

23 Q Then you told us there came a second time that Sosa  
24 approached you. About how much later?

25 A Like a half an hour, fifteen minutes later, around

1 there.

2 Q So I believe you told us you got to the party around  
3 11:30 or 12, right?

4 A Yes.

5 Q Approximately?

6 A Yes.

7 Q And he approached this first time. Now you're saying  
8 about a half hour after the first time --

9 A Yes.

10 Q Would that make it around 12:30 approximately? You  
11 tell me, if you know.

12 A Like around 1.

13 Q Around 1 o'clock?

14 A Yeah.

15 Q Sosa approaches you again, he asks you where you're  
16 from?

17 A Yes, he asked me where I was from.

18 MR. CANTOR: Can we have an answer?

19 THE COURT: The answer was given.

20 MR. CANTOR: Okay.

21 Q He said you're in the Bronx, not Puerto Rico?

22 A No. Brooklyn.

23 Q Brooklyn?

24 A Yes.

25 Q You're in the Bronx now, not Brooklyn?

1 A Yeah.

2 Q Again, he said if you disrespect Margie, he would fuck  
3 you up?

4 A Yes, he did.

5 Q And what else did he say?

6 A That she's not alone, that she has peoples.

7 Q So the second time, around 1 o'clock, did he do  
8 anything with his hands?

9 A Yeah, he went (indicating). He went like that to me.

10 MR. ROSENFELD: Again, with his right hand, he's  
11 taking his right hand with his four fingers slightly bent  
12 to the thumb and pounded himself, I'm going to use the  
13 word, below the left shoulder.

14 THE COURT: So indicating.

15 Q Did he hurt you?

16 A It didn't hurt at the time, but I was shocked because  
17 he put his hands on me.

18 Q I just asked if he hurt you. Were you injured?

19 A No.

20 Q Did you react to that when he patted you, whatever  
21 word you want to use, on the shoulder?

22 A No.

23 Q You said something to him at that point?

24 A I don't remember.

25 Q Did you tell us on direct, Mr. Cantor I told him if

1 I'm with her and she accepts the person I am, it doesn't  
2 matter?

3 A Yes.

4 Q That's what you said to him?

5 A Yes, that's what I said to him.

6 Q Sosa responded or told you he would keep a close eye  
7 on you?

8 A Yes, he did.

9 THE COURT: Gentlemen, please approach.

10 (Whereupon, there was a discussion held, off the  
11 record, at the bench, among the Court, the assistant  
12 district attorneys, defense counsel, and outside the  
13 hearing of the defendant and the jury.)

14 (Whereupon, the following takes place, on the  
15 record, in open court, in the presence of the Court, the  
16 assistant district attorneys, defense counsel, the  
17 defendant and the jury.)

18 THE COURT: Mr. Delgado, we're going to break for  
19 lunch, sir, you may stand down. Have your lunch, come back  
20 at 2 o'clock, okay?

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Do not discuss your testimony.

23 (Whereupon, the witness left the stand and  
24 returned to the defense table.)

25 MR. CANTOR: I'm sorry, Judge?

1 THE COURT: Discuss his testimony.

2 MR. CANTOR: With?

3 THE COURT: With anyone.

4 MR. CANTOR: During the luncheon hour?

5 THE COURT: Yes.

6 All right. Madam Forelady, ladies and gentlemen  
7 of the jury, likewise have a good lunch. Please be back  
8 sharp 2 o'clock. We'll continue with Mr. Delgado. You may  
9 follow the officer.

10 (Whereupon, the jury left the courtroom.)

11 THE COURT: All right. Gentlemen, we'll see you  
12 at 2:15, give the sergeant time to bring up Mr. Delgado.  
13 So we stand in recess.

14 (Whereupon, a lunch recess was taken.)

15 A F T E R N O O N S E S S I O N

16 THE COURT: Good afternoon.

17 MR. CANTOR: Good afternoon.

18 MR. ROSENFELD: Good afternoon.

19 THE COURT: Mr. Clerk.

20 THE CLERK: This is case on trial, People of the  
21 State of New York against David Delgado. Let the record  
22 reflect the district attorney's office, the defense  
23 attorney and the defendant are present, jurors are not  
24 present at this time.

25 MR. CANTOR: Judge, I have an application.

1 THE COURT: Yes.

2 MR. CANTOR: During the cross examination of my  
3 client --

4 THE COURT: During cross, yes.

5 MR. CANTOR: -- the People elicited from my  
6 client that he was on parole. I objected, and you did give  
7 a curative instruction to the jury. Then this prosecutor  
8 proceeded to question along the same line, and my client,  
9 although I have advised him as a layperson, he really  
10 doesn't understand the nature and quality of Sandoval  
11 limitation, so in his answer, and I'm sure the assistant  
12 district attorney was ever hopeful that my client would  
13 repeat it, my client used the word parole. This was after  
14 you had given your curative instruction.

15 I begged the Court to go to the side bar, the  
16 Court refused. I told the Court that and you gave  
17 permission pursuant to the People's application for the  
18 court reporter to read it back. That answer once again  
19 embraced the word parole, which minutes before you had told  
20 the jury to drive out of their mind and not consider, that  
21 my client was only charged with the charges that you will  
22 present to them. I was refused a side bar. I had heard  
23 the word parole. This prosecutor had gotten -- heard the  
24 word parole. I do not know if you had heard the word  
25 parole or not. All I know is by allowing this court

1 reporter or the court reporter who was there to read it  
2 back, the word parole, with the articulate once again, it  
3 was of extreme damage to my client that you refused me the  
4 right of a simple side bar that would have consumed 60  
5 seconds or less.

6 This prosecutor doesn't just bend the rules of  
7 evidence, he breaks them. This prosecutor repeatedly  
8 during my examination, the beginning, the background, the  
9 history of my client because our defense is one of my  
10 client acted by way of justification, that his mind is  
11 impressionable, weak, troubled, bordering on feeble  
12 mindedness, and in order to establish that, of course I had  
13 to bring out his entire pitiful and sorrowful background.  
14 You did allow me to do such. But each and every time I  
15 sought to do that, the prosecutor who is a quasi judicial  
16 officer objected.

17 You, the Court, overruled those objections and I  
18 was able in all candor to flesh out that background that  
19 would allow me to argue to this jury that my client's mind  
20 was a troubled, fragile, delicate mind, not that he's  
21 insane, but he has a very impressionable mind on account of  
22 his life's history. But yet this prosecutor sought each  
23 and every time I went into these sorted events that  
24 comprise my client's history, he objected. This  
25 prosecutor, and I say this in the absence of the jury, more



1 than any other prosecutor I have encountered in 45 years at  
2 the bench, yearns for a conviction at any cost.

3 Why weren't we at the side bar? Why weren't we  
4 at the side bar? Because that would have prevented my  
5 client from repeating the word parole. He's a lay person.  
6 He's doing the best he can. I didn't have that side bar.  
7 And I had complete continuous interruptions of my direct  
8 examination about my client's history and background that  
9 would allow me to argue to this jury that he's incapable of  
10 formulating the intent to cause the death of another, or to  
11 inflict serious physical injury upon another.

12 Judge, I'm constrained by virtue of the behavior  
13 of the assistant district attorney to repeat a legitimate  
14 and recognizable defense, an inability to form the intent  
15 necessary to commit the crime. I'm forced to move for a  
16 mistrial. I don't think that my client is getting a fair  
17 trial.

18 We should have been at that side bar, the  
19 reporter should have been at that side bar, counsel should  
20 have been at the side bar, and you would have heard the  
21 very word that you had cautioned minutes before this jury  
22 to strike from their mind and only consider the charges  
23 that you would ultimately place before them.

24 I move for a mistrial, Judge, on the grounds that  
25 my client by virtue of your inability to hear me at the

1 side bar, and by virtue of the continuous obstruction by  
2 this assistant district attorney to allow me to flesh out  
3 the background, albeit let us be totally forthright and  
4 candid, you overruled 99 of those objections -- 99 percent  
5 of those objections, nonetheless, the prosecutor has a  
6 quasi judicial function which he abrogates and I move for a  
7 mistrial. Thank you.

8 MR. ROSENFELD: Your Honor, sometimes it's hard  
9 to know where to begin with Mr. Cantor's arguments.  
10 They're scurrilous. They're really without any basis or  
11 foundation. The Court has adequately observed in the  
12 course of this trial his disruptive behavior, his  
13 disrespectful behavior. He jumps out of his seat when  
14 there's an objection to be made, starts having colloquy and  
15 making statements to the jury which are totally  
16 unprofessional and improper.

17 Your Honor had asked us to make an objection with  
18 one or two words. Mr. Cantor has turned to the jury and  
19 started to attack me and started to attack this Court and  
20 to say things that are totally improper and should not be  
21 necessary in front of a jury. He knows that. He does it  
22 deliberately to create a record to be able to stand up now  
23 and make the record that he just made.

24 It's clear the questions I asked the defendant  
25 had nothing to do with Sandoval rulings, had nothing to do

1 with incarcerations or crimes. One question I asked him  
2 was where was he before -- where did he work before the  
3 Laundromat and he said on his own, used the words I  
4 believe, I was incarcerated. So that was his trying to  
5 throw that word out there, maybe it's to create a mistrial,  
6 I don't know.

7 Then another time I asked him where was he --  
8 when did he get to Cumberland, the facility Mr. Cantor  
9 referred to, and his response was I got out on parole or  
10 something to that nature. When he had said it, I didn't  
11 even hear the word. He had said something. I asked it to  
12 be repeated. It's his word. He said it out to the jury.  
13 I didn't bring it out and it had nothing to do with the  
14 Sandoval ruling, yet Mr. Cantor stood up at that point,  
15 turned to the jury and made a whole statement, it's part of  
16 the record, indicating that I violated the Court's ruling  
17 on Sandoval.

18 So one of the things I'm going to ask the Court  
19 now, when the jury comes back to please indicate to the  
20 jury that the prosecution in no way has violated any of the  
21 Court's rulings because that would lead them with the wrong  
22 impression, be very misleading.

23 Just because Mr. Cantor says it's so doesn't mean  
24 it is so. He can make things up, propose them to the Court  
25 and it would be outrageous for the jury to continue to

1 serve under his statements. And every time he makes an  
2 objection, it's not one word or two words. It turns into a  
3 long colloquy and turns into statements that he tries to  
4 put before the jury which are improper. So I'd ask also  
5 that he be limited in that respect or controlled somehow.

6 And of course the People oppose a mistrial.  
7 There's absolutely no basis for it.

8 MR. CANTOR: Ever so briefly, your Honor,  
9 virtually each and every time the prosecution has objected  
10 in this case, it is speechified. It has gone beyond the  
11 one word or two words that you have allowed. This  
12 prosecutor is guilty of overwhelmingly disregarding your  
13 direction that you will hear an objection and you will hear  
14 one or two, perhaps even three words after the objection so  
15 that the Court may grasp the grounds of the objection. The  
16 record speaks for itself.

17 Every time I go to the side bar this prosecutor  
18 interrupts me saying that from a distance of about 30 feet  
19 jurors can hear me. That is a force. This prosecutor  
20 engages in forces. This prosecutor speechifies when he  
21 makes an objection. He conveys to the jury the prosecution  
22 or the People's theory that warrants a conviction here. I  
23 have never had such a prosecutor speechify and try his case  
24 in such a disreputable contrary to the rules of evidence.

25 I'm the one who should protest. I'm protesting,

1 your Honor, the simple fact that your Sandoval ruling,  
2 especially after you gave them that instruction, was  
3 violated once again without benefit of a side bar and the  
4 assistant district attorney insisted like Tennyson's "The  
5 Brook" going on and going on and insisting that the court  
6 reporter read, full well knowing that embraced within my  
7 client's answer was the word parole that innovates, that  
8 reduces the vigilant vitality of the charges that you give.  
9 That is a deliberate tactic on behalf of an experienced  
10 prosecutor.

11 You have before you, Judge, ample grounds to  
12 grant a mistrial. In short, my client on account of the  
13 action of the speechifying and the maneuvering of an  
14 assistant district attorney is not withstanding your best  
15 efforts receiving a fair trial. My application is one that  
16 I grasp.

17  
18 (Continued on next page.)  
19  
20  
21  
22  
23  
24  
25

PROCEEDINGS

1732

1 MR. CANTOR: And my application is one that I  
2 press.

3 THE COURT: Anything further?

4 MR. ROSENFELD: No, it does not deserve a  
5 response, your Honor, I won't.

6 THE COURT: I regret very much that the record  
7 has to be burdened with these types of personal remarks.  
8 The Court is not offended as much as either of you have  
9 suggested being offended.

10 with regard to the application for a mistrial the  
11 Court believes we have not even come to the threshold to  
12 give any vitality to serious consideration for a mistrial.  
13 That is denied.

14 For the record, in regard to your earlier  
15 requests, Mr. Cantor, to approach for sidebar what you  
16 conveniently left out is the Court told you that it would  
17 reserve on your behalf to make a record at the end of  
18 whenever the Court found it convenient.

19 MR. CANTOR: Of course, you did.

20 THE COURT: You chose not to do that, rather you  
21 chose now to make your statement, which is fine. No need  
22 to stand.

23 MR. CANTOR: No, out of respect I stand.

24 THE COURT: I appreciate out of respect, but no  
25 need to stand at this moment but I've heard enough and I've

E-ljb

PROCEEDINGS

1733

1 made my ruling, you have both made your record. At the  
2 right time, of course, I invite all of you, each of you to  
3 submit the charge that you think will be satisfactory to  
4 sanitize this jury and the Court will see that at the  
5 charging conference.

6 MR. CANTOR: I will submit it now.

7 THE COURT: No, I don't want it now.

8 MR. CANTOR: Okay, Judge.

9 THE COURT: I said at the charging conference.

10 MR. CANTOR: But see --

11 THE COURT: I have heard enough, Mr. Cantor.

12 MR. CANTOR: All --

13 THE COURT: I've heard enough.

14 MR. CANTOR: Okay.

15 THE COURT: Nothing more has to be said.

16 MR. CANTOR: But what you didn't hear was the  
17 word parole --

18 THE COURT: There is nothing more to be said.

19 MR. CANTOR: -- in the question.

20 THE COURT: Nothing.

21 MR. CANTOR: But the only way --

22 THE COURT: Mr. Cantor --

23 MR. CANTOR: Judge, the only way to be precluded  
24 was by a side conference at that point.

25 THE COURT: Yes, Mr. Cantor.

E-1jb

PROCEEDINGS

1734

1 MR. CANTOR: I've made my record. Now you've  
2 made your rulings and when you allow me to take a  
3 respectful exception.

4 THE COURT: Of course. All right. Let us bring  
5 back first the jury, gentlemen. Mr. Rosenfeld?

6 MR. ROSENFELD: Just my request to the jury that  
7 the People did not violate *Sandoval*, an improper statement  
8 that Mr. Cantor made in front of the jury regarding  
9 prosecution's --

10 THE COURT: I will take up that as part of any  
11 charging conference charge that you would think would be  
12 appropriate to answer the situation at the right time. Not  
13 now.

14 Let us bring back the jury.

15 (Whereupon the witness resumes the witness  
16 stand.)

17 THE COURT: Good afternoon, Mr. Delgado.

18 THE WITNESS: Good afternoon.

19 THE COURT: Once again I trust you followed the  
20 Court's ruling from before, you didn't have any discussion  
21 about your testimony?

22 THE WITNESS: No.

23 THE COURT: All right. We continue with --

24 COURT OFFICER: Jury entering.

25 (Whereupon the jury enters.)

E-1jb



Defense - DAVID DELGADO - cross

1735

1 THE COURT: -- cross examination.

2 MR. CANTOR: Can he fix his collar, Judge? Thank  
3 you.

4 THE COURT: Continue, Mr. District attorney.

5 CROSS EXAMINATION

6 BY MR. ROSENFELD:

7 Q. Mr. Delgado, after the first time Sosa came over to  
8 you and made the statement that he made to you, you told us  
9 before you told him okay. whatever, right?

10 A. Yes.

11 Q. And the video statement you told the Assistant  
12 District Attorney that you told Sosa I am a man, I get your  
13 point. Did you say that also or was that instead of the first  
14 thing?

15 A. I was kind of confused, but I think I said that too.

16 Q. Okay. And then the second time he came over to you he  
17 made a statement to you, you told us about it right before  
18 lunch, and Sosa said was he would keep a close eye on you,  
19 right?

20 A. Yes.

21 Q. Correct?

22 A. Yes.

23 Q. And, again, you said he pointed his finger at you,  
24 this is the second time?

25 A. Yes.

E-1jb

Defense - DAVID DELGADO - cross

1736

1 Q. Okay. And did he have anything in his hand when he  
2 pointed his finger at you?

3 A. No.

4 Q. Did he ever show you any weapon?

5 A. No.

6 Q. Did anybody at the party ever display a weapon to you?

7 A. No.

8 Q. And did you have a knife on you at that time when he  
9 came over to you the second time?

10 A. No.

11 Q. Then you told us that Sosa was removed from the party?

12 A. Yes.

13 Q. Okay. And is that when you and Margie left?

14 A. Couple of minutes later, yes.

15 MR. CANTOR: I'm sorry?

16 THE WITNESS: Couple of minutes later, yeah.

17 Q. You went back to Margie's apartment, went inside with  
18 her, right, to get the cranberry juice?

19 A. Yes.

20 Q. And where did you go?

21 A. I went to the bathroom.

22 Q. So, you went to the bathroom and then what did you do?

23 A. Um, I walked towards the kitchen.

24 Q. Go ahead?

25 A. And I saw --

E-1jb

Defense - DAVID DELGADO - cross

1737

1 MR. CANTOR: I can't hear him. Can he raise his  
2 voice up?

3 A. I walked towards the kitchen and I grabbed the knife  
4 and put it in my pocket.

5 Q. Okay. And when you were in the kitchen where was  
6 Margie?

7 A. She was at the entrance of the door walking out.

8 Q. So you heard her testify during trial, right?

9 A. Yes.

10 Q. And I asked her and she testified that you never went  
11 into the kitchen?

12 A. She had her back turned so she couldn't see where I  
13 was going.

14 Q. You didn't tell her you were going into the kitchen,  
15 right?

16 A. No, I didn't tell letter, no.

17 Q. And you grabbed the knife from the kitchen, I think  
18 you said like the drainboard area?

19 A. Yes.

20 Q. And show us where did you put it?

21 A. Huh?

22 Q. Where did you put it?

23 A. In my right pocket.

24 Q. Was the knife sharp?

25 A. It was a sharp knife.

E-1jb

Defense - DAVID DELGADO - cross

1738

1 Q. And was it covered with anything when you put it in  
2 your pocket?

3 A. No.

4 Q. And then you walked out the door?

5 A. Yes.

6 Q. Did you ever show Margie that you had the knife?

7 A. No.

8 Q. And I believe you said one moment you were nervous at  
9 that time is that why you got the knife?

10 A. Yes, I was.

11 Q. But didn't you say in the statement to the D.A. I  
12 didn't worry that much?

13 A. At the beginning.

14 Q. Well, when you made the statement to the D.A. you had  
15 just described about getting the knife from where the clean  
16 dishes were. You described that it was a four inch black knife  
17 that you put in your pants pocket, in your blue jeans, then you  
18 told the D.A. that you were nervous, you went back to the party  
19 but you didn't worry that much?

20 A. I might had said that.

21 Q. Okay. And you told Mr. Cantor on direct that you were  
22 feeling fearful when you were at Margie's apartment?

23 A. Yes, I was.

24 Q. Scared?

25 A. Yes.

E-1jb

Defense - DAVID DELGADO - cross

1739

1 Q. And that's why you put the knife in your pocket?

2 A. Yes.

3 Q. Now, when you were in Margie's apartment was there  
4 anyone else besides you and Margie?

5 A. No, there was no one else.

6 Q. Was anyone threatening you at that moment?

7 A. No.

8 Q. And you could have stayed at Margie's apartment,  
9 right?

10 MR. CANTOR: Objection, speculative.

11 THE COURT: Only as to form?

12 A. I could have.

13 Q. But you left Margie's apartment and went back to the  
14 party?

15 A. Yes.

16 Q. So isn't it a fact, Mr. Delgado, you weren't worried  
17 at all about Sosa doing anything to you?

18 A. That wasn't the point.

19 Q. What was the point?

20 A. The point is that she wanted to go back to the party  
21 so I just went back with her.

22 Q. Well, you didn't say to her at that point, did you, I  
23 don't want to go back to the party because I am afraid Sosa  
24 might hurt, et cetera?

25 A. I didn't say that.

E-1jb

Defense - DAVID DELGADO - cross

1740

1 Q. And you didn't say to her I would rather stay home,  
2 you go back by yourself because I'm scared?

3 A. No, I didn't say that.

4 Q. You didn't say that. And, in fact, you walked out of  
5 the apartment, but you had a knife in your pocket?

6 A. Yes, I did.

7 Q. And you put the knife in your pocket because if you  
8 needed to use it it would be handy, right?

9 A. For my safety, yes.

10 Q. For your safety?

11 A. Yes.

12 Q. So it was in your, I believe, you said your right  
13 pocket?

14 A. Yes.

15 Q. And you are right handed?

16 A. Yes.

17 Q. So when you left Margie's apartment you knew that if  
18 Sosa did anything to you, you could use the knife against him,  
19 right?

20 A. That wasn't my intention.

21 Q. What was your intention in putting the knife?

22 A. Because --

23 MR. CANTOR: Loud.

24 A. I had it just for my safety, but my intention wasn't  
25 to strike at him, that wasn't my intention. I just had it for

E-1jb

Defense - DAVID DELGADO - cross

1741

1 my safety if he would pull out something. So I didn't know what  
2 he was what his intention was.

3 Q. Okay. That's a fair -- you did not know what Sosa's  
4 intention was?

5 A. No.

6 Q. Correct?

7 A. Correct.

8 Q. But nevertheless you put a sharp five in your pocket?

9 A. I did.

10 Q. Okay. And when you left the apartment you felt safer  
11 because you had the knife in your pocket, right?

12 A. No, I didn't. I still was nervous.

13 Q. Still nervous and yet you continued to go out of  
14 Margie's apartment, across the area, back up the building into  
15 Carmen's Diaz apartment?

16 A. Correct.

17 Q. Did you tell Mr. Cantor the purpose of having the  
18 knife on was protection?

19 A. Yes.

20 Q. So if somebody used a weapon against you, you would  
21 have a weapon to use against them, right?

22 A. Yes.

23 Q. So you went back to the party and what happened when  
24 you got back?

25 A. I walked in and --

E-1jb

Defense - DAVID DELGADO - cross

1742

1 MR. CANTOR: I can't hear you, I'm sorry.

2 A. I walked in the apartment. Everything was normal.  
3 People was drinking and I just sat down for awhile and started  
4 talking to other people.

5 Q. Well, you told Mr. Cantor earlier that you had several  
6 drinks at some point, six drinks of something and beers?

7 A. Yes, I did.

8 Q. Was that before you left for Margie's or after you  
9 came back from Margie's?

10 A. During the whole party.

11 Q. Okay. So it was over the course of about two hours or  
12 two-and a-half hours.

13 A. Yes.

14 Q. And you mentioned that you took a medication earlier?

15 A. I did.

16 Q. And were you concerned at all that alcohol and the  
17 medication would mix?

18 A. I wasn't thinking at the time, I wasn't.

19 Q. So were you concerned or not?

20 A. Yes, I was concerned.

21 Q. But you went ahead and drank alcohol anyway?

22 A. I did.

23 Q. Okay. No one poured it down your throat?

24 A. No.

25 Q. And you said you were feeling a little tipsy, I

E-1jb



Defense - DAVID DELGADO - cross

1743

1 believe, is that the word?

2 A. Yes, I was.

3 Q. Was that when you left for Margie's apartment or when  
4 you came back from Margie's apartment that you felt tipsy?

5 A. During the party, in the beginning when I started  
6 drinking I already felt an affection to it as the liquor.

7 Q. Okay. But you left and you walked over to Margie's,  
8 right?

9 A. Yes.

10 Q. Feel better at that point?

11 A. A little bit.

12 Q. How about when you got to Margie's apartment?

13 A. I was feeling not normal, but I was feeling like if I  
14 was drinking all night and I wasn't, you know, I was kind of --  
15 my head was kind of spinning.

16 MR. CANTOR: I can't hear, Judge.

17 THE WITNESS: I said my head was spinning.

18 Q. Did you when you were in Margie's apartment say to  
19 Margie I feel like lying down because I am dizzy and my head  
20 was --

21 A. I never said that, no.

22 Q. So you were okay enough to go back to the party?

23 A. Yes because she wanted to go, so we went back.

24 Q. And you wanted to please her, right?

25 A. Yes.

E-ljb

Defense - DAVID DELGADO - Cross

1744

1 Q. So you went back to the party, you didn't have any  
2 trouble walking between the apartments, did you?

3 A. No, I didn't.

4 Q. And you got back to the party and you drank -- you say  
5 you drank some more then?

6 A. I probably did, yes.

7 Q. You probably did or you did?

8 A. I did drink, but I am saying I did.

9 Q. How much more did you drink between then and the time  
10 you ran out?

11 A. I don't recall how much I drank at that point.

12 Q. You say you came back into the party and you sat down,  
13 did you go back into the kitchen where Tango was to smoke again?

14 A. I don't recall.

15 Q. And you said Sosa had been taken out of the party, was  
16 Sosa back at the party at this point?

17 A. Yes, he was.

18 Q. And he was back dancing and socializing with other  
19 people at that point while you were sitting down?

20 A. I wasn't paying attention to him.

21 Q. Okay. No one was threatening you at that moment?

22 A. At that moment, no.

23 Q. And you were sitting near that table that you pointed  
24 to on the photograph?

25 A. I did.

E-1jb

Defense - DAVID DELGADO - cross

1745

1 Q. And where was Margie?

2 A. She was on my lap.

3 Q. And the woman, Mercedes Rodriguez?

4 A. She was on the other side.

5 Q. And at this point you said Sosa came over to you  
6 again?

7 A. Not at that point.

8 Q. Okay. So you decided at some point to leave?

9 A. Not at that point.

10 Q. Okay. Well, what point did you?

11 A. After he started arguing with Carmen Diaz's daughter  
12 and when he stepped out the apartment that's when I told Margie,  
13 let's go, I am tired let's go and when I was just putting my  
14 jacket on and she was putting her jacket on and she was talking  
15 to Mercedes.

16 MR. CANTOR: I can't hear.

17 THE WITNESS:

18 A. I was putting my jacket on. She was putting her  
19 jacket on and she was talking to Mercedes and two or three  
20 seconds Sosa had just walked back in stating, I don't know. I  
21 really don't exactly don't remember what he was stating, but he  
22 was talking out loud and I was just standing there ready to  
23 leave.

24 Q. So you were standing ready to leave and I think you  
25 told us you were standing near the table?

E-ljb

Defense - DAVID DELGADO - cross

1746

1 A. Yes.

2 Q. And we were using People's Exhibit three before. Were  
3 you standing by the table, standing by this table (indicating),  
4 correct?

5 A. Yes.

6 Q. Was the door open?

7 A. Yes, the door was open.

8 Q. So you were at the table and where was Margie?

9 A. She was in front of me.

10 Q. Right in front of me. You mean to the right of where  
11 my pen is or to the left?

12 A. Yes, to the right.

13 Q. Yes, to the right. So would be almost next to you?

14 A. Yes, she was.

15 Q. And Mercedes was sitting on the chair?

16 A. Yes.

17 Q. Okay. And Sosa was where?

18 A. At that point he was out the apartment.

19 Q. Well, when he came back?

20 A. Oh, when he came back in, oh, he just walked right  
21 back in and was just standing there.

22 Q. We use People's Exhibit four, does that show better  
23 where (indicating) Sosa was when he came back in?

24 A. Yes.

25 Q. And I am pointing at the chair, where was he in --

E-1jb

Defense - DAVID DELGADO - cross

1747

1 with regard to where this chair is?

2 A. Toward the right, more like around there (indicating).

3 Q. Right where my pen is (indicating)?

4 A. Yes.

5 Q. So, that's below the right table clothe on the  
6 photograph, on the bottom right quadrant, Sosa was here  
7 (indicating)?

8 A. Yes.

9 Q. You were over here by the white table clothe?

10 A. Yes.

11 Q. Margie was next to you (indicating), I am  
12 approximating?

13 A. Yes.

14 Q. Mercedes was in the chair (indicating)?

15 A. Right there (indicating).

16 Q. There (indicating) was the open door?

17 A. Yes.

18 Q. Had you started to walk outdoor?

19 A. Not at that point we just got up.

20 Q. Okay. Your coats were on and Sosa had already come  
21 in, correct?

22 A. Yes.

23 Q. When he came in where did he go?

24 A. He was standing further this way (indicating).

25 MR. CANTOR: I can't hear.

E-1jb

Defense - DAVID DELGADO - cross

1748

1 THE WITNESS: He was standing further this way.

2 Q. Further this way (indicating), so I am plopping my pen  
3 around.

4 A. No, upper she's.

5 Q. That's when he came back in?

6 A. Yeah.

7 Q. So there is nothing between you and the door at that  
8 point?

9 A. No.

10 Q. And when Sosa came back in did he have any weapon in  
11 his hand?

12 A. No.

13 Q. So, now at this point is when Sosa approached you?

14 A. After he said what he said to the other people he  
15 noticed that I was leaving and --

16 Q. Okay.

17 A. And that's when he approached me.

18 Q. Go, ahead, continue. What happened when he approached  
19 you?

20 A. And he asked me if I was leaving and I told him, yes,  
21 I was and I told him why. So he just told me I just want you to  
22 remember what I told you earlier and I gave him (indicating)  
23 again, I turned my back on (indicating) like forget about him.

24 MR. CANTOR: Louder.

25 A. I turned my back towards him and that's when he

E-ljb

Defense - DAVID DELGADO - cross

1749

1 grabbed me and when he pulled me he was already swinging a punch  
2 at me. So I kind of like lean towards him (indicating) and he  
3 punched me again and that's when I pulled out a knife and  
4 started swinging at him to get him off of me and we just  
5 stumbled like rumbling (indicating) and we just fell on top of  
6 the sofa.

7 MR. ROSENFELD: Indicating that during his  
8 statement just now the witness made several motions with  
9 his hands, including the first kind of pointing his left  
10 arm away the second one, crossing his arms in a fist across  
11 his chest and then another motion moving forward.

12 MR. CANTOR: With his hands pulled up in a fist.

13 THE COURT: He said indicating.

14 MR. CANTOR: And he touched that fist to his left  
15 shoulder two times.

16 THE COURT: You accept that?

17 MR. ROSENFELD: Yes.

18 Q. All right. Margie was next to you, right?

19 A. She was there at the point that when we was talking,  
20 yes, but I wasn't really paying attention to what she was doing.

21 Q. And at some point when Sosa approached you and started  
22 talking did Margie grab you?

23 A. I believe so, I don't recall.

24 Q. She grabbed your arm?

25 A. I think so, yeah.

E-ljb

Defense - DAVID DELGADO - cross

1750

1 Q. You hear her testify here in court?

2 A. I hear her say it, but I can't really remember what  
3 she really was doing, I was paying attention to this guy, so I  
4 don't know what she was doing right --

5 Q. So it was Margie who grabbed your hands not the  
6 defendant -- not the deceased?

7 A. He grabbed me on my left arm (indicating) and Margie  
8 grabbed me, supposedly, by my right.

9 Q. So, Mr. Delgado, Margie grabbed your arm not Sosa,  
10 correct?

11 A. I think so.

12 Q. You told the detective in the car Sosa when he came  
13 back he grabbed my arm, meaning Sosa, right, that's what you  
14 told the detective?

15 A. Yeah, grabbing me right here (indicating).

16 MR. ROSENFELD: Indicating the witness with his  
17 right hand is grabbing his suit jacket above his left --  
18 below his left shoulder.

19 THE COURT: So indicating.

20 Q. But it was Margie who grabbed your arm, right?

21 A. She stated that.

22 Q. Okay. Was she wrong?

23 A. I don't remember, I don't recall.

24 Q. Okay. And at that point you could have walked out,  
25 right?

E-ljb



Defense - DAVID DELGADO - cross

1751

1 A. It was too late. He was already on top of us -- he  
2 was already on top of me.

3 Q. Now, show me how he was holding his hands when he was  
4 on top of you?

5 A. He just grabbed me like this.

6 Q. Before he grabbed you? Before he grabbed you where  
7 did he have his hands, down?

8 A. Yes (indicating).

9 MR. ROSENFELD: Indicating he had them down, the  
10 witness had his hands out in front of him with his fingers  
11 open.

12 Q. Am I correct, Mr. Delgado?

13 A. Yes.

14 Q. So there was nothing in his hands?

15 A. No.

16 THE COURT: So indicating.

17 Q. And then what did Sosa do with his hands?

18 A. Just started going like this (indicating) with his  
19 hand, going like this (indicating), oh, remember what I told you  
20 so, that's when I turned --

21 MR. CANTOR: I can't hear you.

22 A. That he was pointing at me (indicating), touching me  
23 in my shoulder (indicating) and that's when I turned my back  
24 towards him.

25 Q. Stop.

E-1jb

Defense - DAVID DELGADO - cross

1752

1 MR. CANTOR: I would like to have the complete  
2 answer. He can't stop an answer. What happened was the  
3 question.

4 THE COURT: We have been through this before.

5 MR. CANTOR: Let him continue.

6 THE COURT: We have been through this before.

7 MR. CANTOR: I am sorry, your Honor.

8 THE COURT: We have been through this before, you  
9 can't stop an answer. However, in this case he did not  
10 withdraw his answer so the answer will continue.

11 MR. CANTOR: Well, the answer, continue please,  
12 Mr. Witness.

13 A. He was pointing at me (indicating), he was touching my  
14 shoulder (indicating) and telling me to remember what he had  
15 told me earlier and I just turned my back like I didn't want to  
16 listen to what he was saying. So I guess he felt offended that  
17 I gave him my back.

18 MR. ROSENFELD: All right. Let's go back because  
19 I am trying to put on the record, your Honor, the motions  
20 that he is making, which is the only reason I stopped him,  
21 not to stop the question.

22 MR. CANTOR: Judge, we don't need this  
23 speechifying.

24 MR. ROSENFELD: I am trying --

25 MR. CANTOR: I object.

E-1jb

Defense - DAVID DELGADO - cross

1753

1 MR. ROSENFELD: Can I make the record?

2 THE COURT: Now you can make the record --

3 MR. ROSENFELD: Thank you.

4 THE COURT: -- of what was indicating.

5 MR. ROSENFELD: Thank you. Indicating while the  
6 witness was talking he used his right hand pushing forward  
7 with four fingers separated from his thumb in a motion then  
8 he also moved his right hand towards him, again, that left  
9 upper area below his shoulder hitting himself as he did  
10 that.

11 THE COURT: So indicating.

12 Q. Now, during the party had you disrespected Margie?

13 A. Never.

14 Q. When you came back in with Margie, when you went back  
15 to her apartment were you still treating her nicely?

16 A. Of course.

17 Q. She sat on your lap?

18 A. Yes.

19 Q. You weren't disrespecting her, right?

20 A. No.

21 Q. You didn't have no argument with her, right?

22 A. No.

23 Q. So would it be fair to say that you treated Margie  
24 respectfully during the party?

25 A. Yes.

E-1jb

Defense - DAVID DELGADO - cross

1754

1 Q. And when Sosa came over to you you said he said the  
2 same thing he said before was, I will fuck you up and those  
3 other words?

4 A. Yes, he did.

5 Q. Okay. That would be if you disrespected Margie,  
6 right?

7 A. Yes.

8 MR. CANTOR: I object to the word "if" that's not  
9 what the witness testified.

10 THE COURT: I will allow it.

11 Q. Did you say that if you had disrespected Margie he was  
12 going to fuck you up?

13 A. Yes.

14 Q. Okay. But you hadn't disrespected Margie, right?

15 A. No.

16 Q. And Sosa didn't have anything in his hands?

17 A. No.

18 Q. And he touched you on the shoulder with whatever force  
19 you indicated, right?

20 A. Yes.

21 Q. And that's when Margie grabbed your arm?

22 MR. CANTOR: Objection, he has denied that. He  
23 said he doesn't recall.

24 MR. ROSENFELD: No.

25 THE COURT: I will allow it. It's cross

E-1jb

Defense - DAVID DELGADO - cross

1755

1 examination.

2 MR. CANTOR: Okay.

3 A. I don't recall.

4 MR. CANTOR: Can't hear you.

5 THE WITNESS: I don't recall.

6 Q. But you said now, you turned your back on Sosa, right?

7 A. Yes.

8 Q. Where were you going?

9 A. Out the door.

10 Q. So if you had continued, you turned your back, you  
11 could have walked right out the door, right?

12 A. Yes.

13 Q. Okay. But at that movement you said Sosa grabbed you  
14 and you indicated with your right arm, again, grabbing the cloth  
15 on your jacket on the left side, right?

16 A. Yes.

17 Q. You had your back to him?

18 A. Not fully, but I was turning my back already, that's  
19 when he grabbed me.

20 Q. Okay. Did you see him make that grabbing motion  
21 before he grabbed you?

22 A. I didn't see it coming.

23 Q. You didn't see it coming. So how do you know it was  
24 Sosa who was going to grab you?

25 A. He was the one behind me.

E-1jb

Defense - DAVID DELGADO - cross

1756

1 Q. How did you know he didn't walk away?

2 A. It was so quick, it happened in seconds.

3 Q. But you didn't see who it was that grabbed your  
4 shoulder until you turned around and swung at him?

5 A. I turned around and he still was holding me and that's  
6 when he swung at me.

7 Q. He swung. So he grabbed your shoulder and show us the  
8 motion you made after your shoulder was grabbed?

9 A. He (indicating).

10 Q. What did you do that --

11 MR. CANTOR: Loud.

12 A. He pulled me and I turned towards him.

13 Q. And what did you do with your right hand?

14 A. I still had it down.

15 Q. By your side?

16 A. I guess it was by my side and he just swung and he hit  
17 me between my neck and my face (indicating), that's when I  
18 leaned towards him and he punched me again.

19 Q. Stop, please. At that point where was the knife?

20 A. It was still in my pocket.

21 Q. So you are telling us for the first time after telling  
22 Mr. Cantor that now Sosa swung and hit you in the neck area,  
23 correct?

24 A. Yes.

25 Q. Well, while you were in the car with the detective you

E-ljb

Defense - DAVID DELGADO - cross

1757

1 told him, referring to Sosa, when he came back he grabbed my  
2 arm, I saw a knife on the table and grabbed it and swung at him,  
3 that's not correct, right?

4 A. I stated that.

5 Q. You stated that, but it's not true?

6 A. That's -- it's just the way I explained, that it was  
7 just to throw it out there, what was going on throughout the  
8 party, but I wasn't fully getting a full statement.

9 Q. How about in your written statement which was, by the  
10 way -- I'm sorry, withdrawn.

11 The Miranda statement was read to you and you initialed it,  
12 right, these are your initials wherever it says DD?

13 A. Correct.

14 Q. And, of course, that's your signature at the bottom,  
15 right?

16 A. Yes.

17 Q. And the detective signed it also?

18 A. Yes.

19 Q. Now, up on top the detective had filled out the top  
20 and the time is 14:55, which is 2:55 hours -- 2:55, correct?

21 A. I am assuming.

22 Q. Okay.

23 MR. CANTOR: I can't hear you.

24 A. I am assuming.

25 MR. ROSENFELD: Your Honor, for the record, I

E-1jb

Defense - DAVID DELGADO - cross

1758

1 have heard every response from the defendant and I am  
2 standing about five feet.

3 MR. CANTOR: So what I mean, but speechifying.  
4 If he wants to testify let him take the stand.

5 THE COURT: The important thing is jurors there  
6 at the end did you hear him?

7 THE JURY: Yes.

8 THE COURT: Everyone heard.

9 MR. CANTOR: So everyone hears him and he  
10 speechifies, he goes on like that is his brook.

11 MR. ROSENFELD: You know what a tennis brook is?

12 MR. CANTOR: well, if he doesn't know who Alfred  
13 Lord Tennyson is, Judge, he is the lesser for it.

14 MR. ROSENFELD: Okay.

15 Q. Getting back to the statement, so we have here you  
16 wrote this (indicating) down, right?

17 A. Yes.

18 Q. Nobody told you what to write?

19 A. With the help of Detective Banker.

20 Q. With the help of Detective Banker?

21 A. Yes.

22 Q. How did he tell you?

23 A. He spelled out a couple of words for me.

24 Q. Which words?

25 A. I don't remember right now, I don't remember.

E-1jb



Defense - DAVID DELGADO - Cross

1759

1 Q. You saying he helped you with spelling?

2 A. Yes.

3 Q. Okay. Other than helping with spelling you wrote out  
4 the statement, right?

5 A. Yeah.

6 Q. Thank you. X'd out a couple of things. There is a I  
7 here (indicating) you X'd out, right, you crossed that out?

8 A. Yes.

9 Q. And over here (indicating) something else you crossed  
10 that out?

11 A. Yes.

12 Q. Okay. So let's look at the statement. You said when  
13 I had went up to walk away Sosa grabbed me and that's when I  
14 took the knife out my pocket and hit him when I was already  
15 scared and nervous for my safety; is that what it says?

16 A. Yeah.

17 Q. And you wrote that?

18 A. Yeah.

19 Q. Did you see anywhere there where it says Sosa grabbed  
20 me in the shoulder and I turned around and he swung at me and  
21 hit me in the neck?

22 A. No, I didn't stated that.

23 Q. What?

24 A. No.

25 Q. Okay. And Sosa you now say hit you how many times?

E-1jb

Defense - DAVID DELGADO - cross

1760

1 A. He hit my twice.

2 THE COURT: I'm sorry, this is in front of  
3 everybody; what was the question?

4 THE WITNESS: He hit me twice.

5 THE COURT: Twice.

6 Q. This is in front of everybody else, right?

7 A. (No response).

8 MR. CANTOR: How does know?

9 A. I don't recall.

10 Q. You don't know?

11 MR. CANTOR: Can't hear you.

12 A. I don't know.

13 Q. Was Margie standing there?

14 A. She was towards the door, that area (indicating) she  
15 was there.

16 Q. How about Mercedes?

17 A. She was there too.

18 Q. How about Melissa Dempsey?

19 A. I don't know where she was at.

20 Q. How about Tango?

21 A. I don't know where they was at at that point, I don't  
22 know where they were standing at that point.

23 Q. And when he struck you, you then made a motion before  
24 with your hands you fell towards him?

25 A. Yes.

E-1jb

Defense - DAVID DELGADO - cross

1761

1 Q. Okay. And then what did you do?

2 A. He hit me again and that's when I pulled out the knife  
3 and I just started swinging up (indicating).

4 MR. ROSENFELD: Indicating the witness with his  
5 right arm, with his fist closed, moved his right arm with a  
6 fist up two times.

7 THE COURT: So indicated.

8 MR. CANTOR: Three times.

9 MR. ROSENFELD: Just now three times but before  
10 two times.

11 MR. CANTOR: But we will let the jury determine  
12 that.

13 MR. ROSENFELD: Two or three times, whichever.

14 Q. And where did you hit him?

15 A. I don't know where I was hitting him at.

16 Q. But he was right in front of you?

17 A. I wasn't really looking where I hit him at.

18 Q. And you swung the first time did you feel hitting the  
19 head, hitting the fresh?

20 A. I know I was hitting something, but I wasn't sure  
21 where I was hitting him at.

22 Q. You didn't feel the knife penetrate into his head?

23 A. It happened so quick that --

24 MR. CANTOR: Can't hear you.

25 A. It happened so quick that I don't know.

E-1jb

Defense - DAVID DELGADO - cross

1762

1 Q. Well, did you take the knife away and slice Sosa's  
2 nose?

3 A. I was just swinging. I was -- I wasn't -- I don't  
4 know where I was aiming at all. I know I had to get him off of  
5 me, he didn't want to let me go so I was just swinging and I  
6 don't know where I was hitting him at.

7 MR. CANTOR: I am sorry, what was that?

8 THE WITNESS: That I was swinging trying to get  
9 him off of me. I don't know where the stab wounds was  
10 landing at, I wasn't sure.

11 Q. Well, you also sliced his ear in half, right?

12 MR. CANTOR: Objection.

13 A. That's what I saw in the picture.

14 THE COURT: Overruled.

15 MR. CANTOR: I can't hear.

16 THE WITNESS: That's what I saw on the picture.

17 MR. ROSENFELD: You hear that?

18 MR. CANTOR: Yeah.

19 MR. ROSENFELD: Good.

20 Q. And you even stabbed him in the back of the head?

21 A. That's what I saw in the picture.

22 Q. But that means stab in the back of the head meaning he  
23 had his back turned to you?

24 MR. CANTOR: That's not necessarily true.

25 MR. ROSENFELD: It's cross, your Honor.

E-ljb

Defense - DAVID DELGADO - cross

1763

1 MR. CANTOR: I don't care what it is.

2 THE COURT: Overruled.

3 MR. CANTOR: Exception.

4 THE COURT: Noted.

5 Q. People's Exhibit 17G that's the back of his head,  
6 right?

7 A. Yes.

8 Q. So somehow at one point you stabbed him in the back of  
9 the head, correct?

10 A. Correct.

11 Q. You stabbed him in the back of the head, he couldn't  
12 have been facing you, right?

13 MR. CANTOR: Objection, of course, he could.

14 THE COURT: Overruled.

15 A. I'm -- I don't know.

16 Q. Is there a way he could have been facing you and you  
17 stabbed him in the back of the head?

18 A. I guess when we fell on top of the sofa that's  
19 where -- I don't know.

20 Q. You still were swinging?

21 A. No, when we fell I had stopped swinging, but I don't  
22 know what happened. I know I got up and ran.

23 Q. Did you actually, besides hitting him with a knife,  
24 punch him?

25 A. No, I really didn't get to punch him.

E-1jb

Defense - DAVID DELGADO - cross

1764

1 Q. So you just used the knife?

2 A. Yes.

3 Q. And did you see blood?

4 A. No, I didn't.

5 Q. You got blood on your hands, right?

6 A. When I saw my hand I saw blood, but I didn't see blood  
7 coming out of him.

8 Q. Where did the blood come out of him?

9 A. It eventually came from him, but I didn't see blood  
10 coming out at that point.

11 Q. Okay. You weren't injured at all, right?

12 A. No, I wasn't.

13 Q. Did you say anything as you were stabbing Sosa?

14 A. No, I didn't.

15 (Continues next page.)

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E-1jb

## Delgado - Defense - Cross

1 CONTINUED CROSS EXAMINATION BY

2 MR. ROSENFELD:

3 Q. After you stabbed him, what did you do?

4 A. I just ran out.

5 Q. You ran out. Okay. Did anybody say anything to you  
6 before you ran out?

7 A. That I recall, no.

8 Q. Sosa never actually hit you; isn't that true?

9 A. He hit me.

10 Q. Well, you saw the statement that you gave to the  
11 Assistant DA, right?

12 A. There was a lot of things that I didn't state that  
13 happened.

14 Q. No. I asked if you saw it?

15 MR. CANTOR: Judge, can he complete his answer?

16 Can he complete an answer?

17 THE COURT: One second. The answer was completed.  
18 Please be seated.

19 MR. CANTOR: Can I have the question and answer  
20 re-read then, your Honor?

21 THE COURT: Yes, if you have not heard it, of  
22 course. Please re-read it.

23 (Whereupon, the court reporter read back the  
24 above-requested testimony.)

25 MR. ROSENFELD: May I continue?

## Delgado - Defense - Cross

1 THE COURT: Please, sir.

2 Q. At the end when the DA said is there anything else you  
3 want to say, you responded, correct?

4 A. Correct.

5 Q. Okay. And in sum and substance your response was  
6 sorry, I just responded, I was scared. I felt by myself and  
7 then it was -- I believe it was a question, your statement was  
8 the victim or Sosa never showed you any weapon, he put his hand  
9 in your face and then you said I thought he was going to hit me.  
10 That's how you ended the video, right?

11 A. I guess so.

12 Q. Yeah. So he never hit you?

13 A. At the point when he was pointing in my face, he didn't  
14 hit me at that point. There is a lot of things that happened  
15 there at that moment. I was so nervous and confused that I  
16 didn't state, but in the 30 months that I have been  
17 incarcerated, a lot of things are coming back to my mind.

18 Q. So now today you're not confused at all?

19 A. I'm still confused.

20 Q. Still confused?

21 A. I'm still confused with a lot of things that happened.

22 MR. CANTOR: I can't hear.

23 A. I was drinking at the time. I wasn't really focusing  
24 on what everybody was saying, where everybody was standing at  
25 all. I know I was attacked and I defended myself.



## Delgado - Defense - Cross

1 Q. But the fact is you told the Assistant DA that you only  
2 thought Sosa was going to hit you, that he never hit you?

3 MR. CANTOR: I'm going to object unless the Q and  
4 A is played, he's paraphrasing from an exhibit.

5 THE COURT: Your objection is overruled.

6 Mr. DA please continue.

7 Q. Isn't it a fact that you told the DA in sum and  
8 substance that you thought Sosa was going to hit you in the face  
9 but he never hit you, correct?

10 A. It's not correct.

11 Q. So today after 30 months of thinking about it, you're  
12 now saying for the first time on direct examination from  
13 Mr. Cantor, your attorney, that Sosa punched you in the neck; is  
14 that correct?

15 A. Yes, it is.

16 MR. CANTOR: Objection.

17 THE COURT: Overruled.

18 Q. You're not confused about that?

19 A. There are still certain things I'm confused, that I  
20 don't remember. Certain things I do remember. I was drinking.

21 Q. Mr. Delgado, you were very specific telling us and  
22 showing us how Sosa hit you with his four fingers and you  
23 demonstrated in the shoulder. You had no problem remembering  
24 that?

25 A. No.

**Delgado - Defense - Cross**

1 Q. Are you confused about that?

2 A. No.

3 Q. You have no problem remembering the words Sosa said to  
4 you, that he would fuck you up, and his boys or something,  
5 whatever the words were you testified to. You remember all of  
6 those, right?

7 MR. CANTOR: Apparently the ADA does not remember.

8 Q. You remember all of those?

9 A. I don't remember all of them.

10 Q. But you told us what you do remember?

11 A. I remember what I do remember.

12 Q. Yeah. You remember you went and got the knife and  
13 where you got the knife?

14 A. Yes.

15 Q. You remember that Margie didn't see you get the knife?

16 MR. CANTOR: Judge, it is repetitive. Haven't we  
17 had it?

18 THE COURT: It's cross-examination.

19 MR. CANTOR: Of course, it is. Repetitive.

20 Q. You remember those things, right?

21 A. Yes.

22 Q. You were not confused about those things?

23 A. No.

24 Q. And you remember that you ran out of the apartment and  
25 ran downstairs and gave Margie back her cell phone and keys, not

## Delgado - Defense - Cross

1 confused about that, are you?

2 A. No.

3 Q. And you remember that somebody grabbed you, I think you  
4 said Melissa or somebody grabbed as you ran out of the  
5 apartment, yes?

6 A. I think so, yeah.

7 Q. You're not confused about that?

8 A. No.

9 Q. No?

10 MR. CANTOR: I can't hear you.

11 A. No.

12 Q. And you told us earlier that you called Margie and you  
13 asked her some questions, right?

14 MR. CANTOR: Judge, haven't we had it? Really,  
15 haven't we had it?

16 THE COURT: Overruled.

17 MR. CANTOR: You're overruling?

18 Q. You remember that, right?

19 A. Yes.

20 Q. And she told you that Sosa was dead?

21 A. She did.

22 Q. You didn't go to turn yourself in at that point, right?

23 MR. CANTOR: Judge, we have had this prior to  
24 lunch.

25 THE COURT: Overruled.

## Delgado - Defense - Cross

1 A. No.

2 Q. Isn't it fact, Mr. Delgado, you had no intention of  
3 turning yourself in once you found out that Sosa had died?

4 A. I was nervous. I didn't know what to do at this point.

5 MR. CANTOR: Was what?

6 A. I was nervous, so I didn't know what to do at that  
7 moment.

8 Q. Well, Mr. Delgado, have you ever been convicted of a  
9 crime?

10 MR. CANTOR: Objection.

11 THE COURT: Overruled.

12 MR. CANTOR: It's contrary to your ruling. Don't  
13 you remember your ruling?

14 THE COURT: I remember it very specifically.

15 MR. CANTOR: So I object if you remember it  
16 specifically.

17 THE COURT: Well, I'm glad that I wrote it down  
18 because I have it right here in front of me, the very first  
19 question is have you ever been convicted of a crime.

20 MR. CANTOR: Withdraw the objection. Fine.

21 A. Yes.

22 Q. On more than one occasion?

23 MR. CANTOR: No, Judge. If you wrote it down, you  
24 have the second question there.

25 THE COURT: Have the second question, on more

## Delgado - Defense - Cross

1 than one occasion.

2 MR. CANTOR: What's his answer?

3 A. Yes.

4 MR. ROSENFELD: That's what I asked.

5 THE COURT: You may ask.

6 MR. ROSENFELD: Thank you.

7 Q. Was that a felony?

8 A. One felony, yes.

9 Q. And do you have other violations?

10 A. Yes, I have violations.

11 Q. On more than one occasion?

12 A. Two violations.

13 Q. So when you found out that you had stabbed a man and  
14 killed him, you didn't go to the police?

15 A. No.

16 MR. CANTOR: Judge, it's repetitive. How many  
17 times will you allow it?

18 THE COURT: It's cross-examination. Overruled.

19 MR. CANTOR: It's synonymous with ad nauseam  
20 repetition.

21 Q. Correct?

22 A. Correct.

23 Q. Nobody stopped you from calling the police, right?

24 A. No.

25 MR. ROSENFELD: May I have a moment please, your

## Delgado - Defense - Cross

1 Honor?

2 THE COURT: Yes, you may.

3 (Pause in the proceedings.)

4 Q. Mr. Delgado, you said you were tipsy at the party, you  
5 had no problem running out of the apartment and down the stairs,  
6 right?

7 A. I was wibbly wobbly.

8 Q. Okay. As you went down the stairs?

9 A. Yes.

10 Q. Did you fall?

11 A. No, I didn't.

12 Q. Hurl yourself?

13 A. No.

14 Q. When you got to the stairs, ran outside, you were able  
15 to do that, right?

16 A. Yeah.

17 MR. CANTOR: I can't --

18 A. Yes.

19 Q. You were not so tipsy that you couldn't find a cab and  
20 get back home, right?

21 A. The cabs were all on the avenue right there.

22 Q. So you were able to flag one down?

23 A. They were parked.

24 Q. What did you do?

25 A. I asked him if he could take me to Brooklyn. He asked

**Delgado - Defense - Redirect**

1 me what is the address and he told me get in while he punched  
2 the address in the GPS and we drove off.

3 Q. Okay. Then you paid him \$60?

4 A. When I got to Brooklyn, yes.

5 MR. ROSENFELD: Mr. Cantor said something. I did  
6 not hear the answer, Judge.

7 THE COURT: He said \$60.

8 MR. ROSENFELD: But Mr. Delgado was speaking. I  
9 didn't hear what he said. Can I have it read back?

10 THE COURT: Would you care to have it read back?

11 MR. ROSENFELD: Because I could not hear his  
12 answer as Mr. Cantor interrupted me.

13 (Whereupon, the court reporter read back the  
14 above-requested testimony.)

15 Q. You're not confused about any of that, are you?

16 A. No.

17 Q. Okay.

18 MR. ROSENFELD: All right. Thank you. I have no  
19 other questions.

20 THE COURT: Thank you, sir.

21 REDIRECT EXAMINATION BY

22 MR. CANTOR:

23 Q. In a loud voice. Did you stab -- however many times it  
24 was -- Sosa in self-defense?

25 A. Yes.

## Delgado - Defense - Redirect

1 MR. ROSENFELD: Objection.

2 THE COURT: Overruled.

3 Q. At the time that you stabbed Sosa, were you counting  
4 the number of times that you stabbed him?

5 A. No.

6 Q. Were you afraid that your life was in imminent danger  
7 when you stabbed him?

8 MR. ROSENFELD: Objection, leading.

9 THE COURT: I will allow it.

10 A. Yes, I was.

11 Q. And was that the reason you stabbed him?

12 A. Yes.

13 Q. Now, look, I want you, slowly, to show, to demonstrate  
14 to this jury what Sosa on the last occasion did with his hands  
15 to your body. Do you understand the question?

16 A. Yes.

17 Q. Now, do it slowly.

18 (Witness indicating)

19 Q. Okay. What is three times you extended your fingers  
20 and you rammed them into your left shoulder; is that correct?

21 A. Correct.

22 THE COURT: So indicated.

23 Q. What was the next physical action that Sosa took  
24 against you?

25 A. When I turned my back, he grabbed me.



**Delgado - Defense - Redirect**

1 Q. He grabbed you and spun you around?

2 A. Yes, he did.

3 Q. And what did he do with his hands?

4 A. His left shoulder, his left hand came out and punched

5 no.

6 Q. Where?

7 A. In the neck and in between the face.

8 Q. How many times?

9 A. That was one, then he hit me again.

10 Q. So that would be a total of two times?

11 A. Yes.

12 Q. And at that time were you afraid for your life?

13 A. Yes, I was.

14 Q. And was that the reason you used a knife?

15 A. Yes, I did.

16 Q. Were you concentrating on what portion of the body of  
17 Sosa the knife was hitting?

18 A. No, wasn't.

19 Q. Were you ever concentrating on the number of times?

20 A. No.

21 Q. You heard the medical testimony here, did you not?

22 A. Yes.

23 Q. There were five stab wounds, correct?

24 A. Yes, there was.

25 Q. Four of them was superficial and would not cause death

## Delgado - Defense - Redirect

1 and only one did, correct?

2 A. Correct.

3 Q. Were you looking to kill the man?

4 A. No, I wasn't.

5 Q. Were you looking to separate, put space between you and  
6 the man?

7 A. Yes, I was.

8 Q. You were frightened?

9 A. Yes, I was.

10 Q. You were scared?

11 MR. ROSENFELD: Objection to leading, your Honor.

12 THE COURT: I will allow it.

13 A. Yes, I was.

14 Q. You were scared for your life?

15 A. I was scared.

16 Q. For your life?

17 A. For my life, yes, I was.

18 Mr. CANTOR: Now, listen, I'd like the People's  
19 exhibit of the Assistant District Attorney interrogating my  
20 client.

21 MR. ROSENFELD: This is --

22 MR. CANTOR: This is People's Exhibit 10, Judge.

23 MR. ROSENFELD: Fifteen.

24 MR. CANTOR: Fifteen. Yes, it is. I'm handing it  
25 to the assistants. I do not want to touch their machine

## Delgado - Defense - Redirect

1 and cause any destruction.

2 Q. I want you to look at the screen at the videotape of  
3 the interrogation that you underwent by the Assistant District  
4 Attorney at the police precinct.

5 MR. ROSENFELD: Your Honor, he keeps using the  
6 word interrogation. I'm going to object.

7 MR. CANTOR: That's what it is.

8 THE COURT: It's a common parlance word. Move on.

9 MR. CANTOR: Yes. Now watch it, Mr. Delgado.

10 (Videotape is played in open court.)

11 MR. CANTOR: Can the volume be raised? Can it be  
12 raised? That's my request.

13 THE COURT: It could be raised a little bit.

14 MR. ROSENFELD: Excuse me, your Honor. She's  
15 trying.

16 MR. CANTOR: Will it be raised?

17 THE COURT: She raised it.

18 MR. ROSENFELD: She raised it.

19 CONTINUED REDIRECT EXAMINATION BY

20 MR. CANTOR:

21 Q. At the end of that interrogation, the female district  
22 attorney did not ask you if you had anything else to say; is  
23 that correct?

24 A. Yes.

25 Q. You were in a small room, correct, with what looked

**Delgado - Defense - Redirect**

1 like cinderblocks? Were you in a small room?

2 A. Yes.

3 Q. You were there, a prosecutor was there? Yes, no?

4 A. Yes.

5 Q. A video technician from the district attorney's office  
6 was there, right?

7 A. Yes.

8 Q. And Detective Banker was there, correct?

9 A. Yes.

10 Q. What were the approximate dimensions of this room?

11 A. It was a small room.

12 Q. Can you approximate the dimensions?

13 A. Like eight feet long, like five feet to the side.

14 Q. It was a small room?

15 A. Yeah.

16 Q. Did you have an attorney there?

17 A. No.

18 Q. Was there a Judge there?

19 A. No.

20 Q. Was there any family member of yours there?

21 A. No.

22 Q. Once Margie had told you that the man died, you said  
23 you sat on your bed and you couldn't fall asleep?

24 A. Yes, correct.

25 Q. And you were nervous?

## Delgado - Defense - Redirect

1 A. Yes.

2 Q. You were frightened?

3 A. Yes.

4 Q. Well, when you were in this police station just hours  
5 later and you were being interrogated by a prosecutor and there  
6 was a detective and there was no one there aligned with you,  
7 were you nervous?

8 A. I was nervous.

9 Q. You said that you've had 30 months of incarceration to  
10 replay this incident in your mind, correct?

11 A. Correct.

12 Q. And, as you sit here now under oath, are you absolutely  
13 sure, are you absolutely certain that you were struck twice in  
14 either the chin or the neck by a closed fist of Sosa?

15 A. Yes.

16 Q. And the assistant district attorney when she wrapped up  
17 and concluded her interrogation of you never asked you whether  
18 or not there was something else that you wanted to say to add to  
19 the answers that you had made; is that correct?

20 A. Correct.

21 Q. The knife that you took from the drain, you know, where  
22 you put dishes to dry and the utensils to dry, you took that  
23 knife for possible use as self-defense, correct?

24 A. Correct.

25 Q. And when you were on Abilify and Depakote you had to

## Delgado - Defense - Redirect

1 hand in prescriptions to a pharmacist, correct?

2 A. Correct.

3 Q. They didn't give you back those prescriptions, did  
4 they?

5 A. No.

6 Q. They gave you vials containing the drugs, correct?

7 A. Correct.

8 Q. You've been to drug stores in your life, have you not?

9 A. Yes.

10 Q. And if you have a prescription, you have to hand it in  
11 and then you get the medicine?

12 A. Correct.

13 Q. Six drinks of hard liquor and cans of Coors beer. To  
14 be quite blunt about it, you were tipsy, if not intoxicated?

15 A. Correct.

16 MR. ROSENFELD: Objection, leading.

17 THE COURT: I will allow it.

18 A. Correct.

19 Q. Loud voice?

20 A. Yes.

21 Q. No one you said in the video had come to intercede, to  
22 stop Sosa except for a teenage girl, Carmen's daughter, who told  
23 him he had to leave, he was disrespecting the house?

24 A. Correct.

25 Q. No other grown ups had intervened notwithstanding his

## Delgado - Defense - Redirect

1 conduct and behavior during the party; is that correct?

2 A. Correct.

3 Q. And everyone except for Margie was a stranger to you  
4 except having been introduced to two people briefly; is that  
5 correct?

6 A. Correct.

7 Q. Mr. Rosenfeld asked you about the call to your mother  
8 in Puerto Rico. At the time you made that call, were you  
9 depressed?

10 A. Yes, I was.

11 Q. What did you tell your mom?

12 A. I told her what was going on.

13 Q. Well us. Make believe that we're at the other end of  
14 receiver. Well us what you told your mom.

15 A. I told her na, I think I killed somebody and she told  
16 me, she just started screaming like what, what and I explained  
17 to her how it happened and she told me --

18 MR. ROSENFELD: Objection.

19 MR. CANTOR: He brought it out.

20 MR. ROSENFELD: I never brought out what she said.

21 THE COURT: Yes. Objection is sustained.

22 MR. CANTOR: Sorry?

23 THE COURT: The objection is sustained.

24 Q. You spoke to your mom?

25 A. Yes, I did.

**Delgado - Defense - Redirect**

1 Q. You told her you think you killed a man?

2 A. Yes.

3 Q. And she cried and became emotional?

4 MR. ROSENFELD: Objection.

5 MR. CANICK: He already testified to that without  
6 objection.

7 THE COURT: Yes. The objection is sustained,  
8 however.

9 MR. CANICK: But it's already in evidence.

10 THE COURT: The objection to any more questions  
11 along this line are sustained.

12 Q. Is your mom a rather fragile woman or was she back then  
13 when you were telling her on the phone?

14 MR. ROSENFELD: Objection.

15 THE COURT: Sustained.

16 Q. Describe your mother's demeanor at the time that you  
17 made that telephone call?

18 MR. ROSENFELD: Objection.

19 THE COURT: Sustained.

20 Q. Were you able to determine, just yes or no, her  
21 demeanor based upon that telephone call?

22 MR. ROSENFELD: Objection.

23 THE COURT: Sustained.

24 Q. But you were frightened, scared and depressed enough to  
25 cause you to call your mother in Puerto Rico?



## Delgado - Defense - Redirect

1 A. Yes.

2 Q. And confess to her?

3 A. Yes.

4 Q. During the 30 months that you've been in jail, have you  
5 gone over this incident in your mind?

6 A. Yes, I did.

7 Q. And as time passed, do you recall it more and more and  
8 more?

9 A. Yes.

10 Q. You knew when you were being interrogated by the  
11 assistant district attorney that you had twice been punched by  
12 Sosa; is that correct?

13 A. Yes.

14 Q. But when -- who was asking the questions, you or the  
15 assistant district attorney?

16 A. She was.

17 Q. And at the end of it when she asked the last question,  
18 she never asked a question is there anything else that you want  
19 to tell me relevant to this matter?

20 MR. ROSENWALD: Asked and answered.

21 THE COURT: Yes, we have, but I will allow it.

22 MR. CANIOR: Thank you.

23 Q. You can answer that?

24 A. Yes. She didn't.

25 Q. She did not?

## Delgado - Defense - Recross

1 A. She did not.

2 Q. Have you ever in your life been interrogated by an  
3 assistant district attorney where matters had been or the  
4 interview or interrogation was being videotaped in a police  
5 station?

6 A. First time.

7 Q. You were nervous?

8 A. Yes, I was.

9 Q. You were frightened?

10 A. Yes.

11 Q. You were scared?

12 A. Yes, I was.

13 Q. You were wondering what was going to happen to you?

14 A. Yes. I was confused, yes.

15 Q. You didn't know what your fate would be?

16 A. No, I didn't.

17 MR. CANTOR: No further questions on redirect.

18 THE COURT: Mr. DA?

19 Okay. We will take a small break.

20 (Jurors leave the courtroom.)

21 (A recess is taken.)

22 COURT OFFICER: Jury entering.

23 (Jurors enter the courtroom.)

24 THE COURT: Mr. District Attorney?

25 RECROSS EXAMINATION BY

## Delgado - Defense - Recross

1 MR. ROSENFIELD:

2 Q. Mr. Delgado, you've now had a second chance to view the  
3 video, right?

4 A. Yes.

5 Q. And I noticed during the video that at one point you  
6 said he was touching my belly and he was rubbing your stomach.  
7 Do you remember that part of the video?

8 A. Yes.

9 Q. At what point during your direct examination when Mr.  
10 Cantor asked you what happened you said Sosa was touching your  
11 stomach?

12 MR. CANTOR: Objection. May be I never asked.

13 THE COURT: Overruled.

14 A. I didn't remember.

15 Q. You didn't remember that he had touched your stomach?

16 A. Yes.

17 Q. So the day after the incident you remembered that,  
18 right?

19 A. Yes, because he was calling me fat boy.

20 Q. What?

21 A. Because he was calling me fat boy.

22 Q. He was calling you fat boy and was rubbing your  
23 stomach?

24 A. Yes.

25 Q. The first time, second time or right before you stabbed

## Delgado - Defense - Recross

1 him?

2 A. The second time, I think it was.

3 Q. The second time. Well, just tell me at what point this  
4 afternoon or this morning when Mr. Cantor asked you to describe  
5 what happened did you tell him that Sosa was rubbing your  
6 stomach and calling you fat boy?

7 MR. CANTOR: Asked and answered just two questions  
8 ago.

9 THE COURT: Overruled.

10 A. I don't remember telling that to Mr. Cantor that he was  
11 rubbing my stomach.

12 Q. Okay. All right. How about during my cross exam when  
13 I asked what Sosa did with his hands, what position you were in?  
14 At what point did you mention it?

15 MR. CANTOR: Objection. There was no specific  
16 question about that.

17 THE COURT: Overruled.

18 A. I didn't mention it.

19 Q. So the day after the incident, you remembered perfectly  
20 well that Sosa touched you, right, on the stomach?

21 A. Certain things I remembered.

22 Q. Very well. Were you injured at all when you were  
23 punched you in the face?

24 A. No, I wasn't.

25 Q. He didn't hit you that hard?

## Delgado - Defense - Recross

1 A. He hit me, but I didn't get injured.

2 Q. Okay. You never told the detectives, you never  
3 complained of any injury to the detectives, right?

4 A. There was, you know, a lot of things that I didn't tell  
5 the detectives.

6 MR. CANTOR: can't hear you.

7 A. There was a lot of things that I didn't tell the  
8 detectives.

9 Q. Did you ever complain to the detective that the left  
10 side of your face was injured because someone punched you?

11 A. No, I didn't.

12 Q. When you were giving that video statement, the DA said  
13 to you in kind of a question, he didn't hit you, you said no, he  
14 grabbed me, right? You saw that?

15 A. Yes, I did.

16 Q. At what point did you tell the DA that Sosa punched you  
17 twice in the head?

18 A. I didn't tell her that.

19 Q. Okay, but you are telling us now today 30 months later,  
20 right?

21 A. Because now I remember.

22 Q. Now you remember. Looking at the video just now, you  
23 say you were nervous, scared in that video?

24 A. I was nervous.

25 Q. Were you scared?

## Delgado - Defense - Recross

1 A. Of course I was scared because I don't know what was  
2 going to happen to me.

3 Q. You knew you had killed someone, right?

4 A. I found out that I did.

5 Q. You found out from Margie you told us in the phone call  
6 earlier?

7 A. When the detective came to arrest me, they let me know  
8 that I was being arrested for a homicide.

9 Q. Okay. Well, let's go back a little bit. You said when  
10 you spoke to Margie at the end of the conversation she told you  
11 Sosa was dead?

12 A. She told me he died, yes.

13 Q. You knew you killed him?

14 A. Yes.

15 (Continued on the next page.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 Q But yet you just told Mr. Cantor when you talked to  
2 your mother, you said I think I killed someone. Which was it?

3 A There was a lot of things going on my head that I  
4 couldn't focus on speaking, saying. All I know I just --  
5 something happened, something really bad happened.

6 MR. CANTOR: Can I have that re-read, Judge?

7 THE COURT: Yes.

8 (Whereupon, the requested portion was read by the  
9 court reporter.)

10 MR. ROSENFELD: Can I go on?

11 THE COURT: Yes.

12 Q You remembered a lot about the incident in the video,  
13 right?

14 MR. CANTOR: Objection. This is outside of the  
15 scope of recross.

16 THE COURT: Overruled.

17 A Certain things.

18 MR. CANTOR: I can't hear you.

19 A Certain things.

20 Q Well, you said in the video about the knife when asked  
21 about showing it to Margie, you said you showed it or the knife  
22 to Margie at the party because, and those are my words, sum and  
23 substance, a guy was going to attack you?

24 A She, um, when she said in my lap she felt that I had  
25 something in my pocket, so I just went like this (indicating),

1 I just showed her the black part. I didn't really show her the  
2 -- her the knife. And she said, what's that? She said, let me  
3 get it. I said no, no. Leave it there, leave it there.  
4 That's what happened.

5 Q You never mentioned that this morning, did you?

6 MR. CANTOR: Objection.

7 THE COURT: Overruled.

8 A I did not.

9 Q You didn't mention it when I was asking you what  
10 happened during cross exam and I asked you step by step what  
11 happened?

12 MR. CANTOR: Objection. Step by step? He asked  
13 him specific questions to which he gets specific answers.

14 THE COURT: Overruled.

15 A There's a lot of things that -- things that is in my  
16 mind that I don't remember, things that come up, things that I  
17 forget. There's a lot of things.

18 Q So the day afterwards, when you were talking to the  
19 detective, you remembered that and you told the detective,  
20 right, you didn't forget you told him?

21 A Because it came up in my mind at that moment.

22 Q That was important?

23 A Yes.

24 Q To talk about showing the knife to Margie?

25 A She asked me so I answered. If you ask me a question,



1 I'll answer you.

2 Q Oh, okay. Great. So when she asked you and said the  
3 words he didn't hit you, and you said no, he grabbed my arm,  
4 you answered?

5 A 'Cause I didn't remember exactly what was going on. I  
6 was so confused and, you know, nervous.

7 MR. CANTOR: I'd like to have the balance please.  
8 Continue.

9 THE COURT: Do you have an objection?

10 MR. CANTOR: Yes.

11 THE COURT: Overruled.

12 MR. CANTOR: Can he finish with his answer?

13 THE COURT: If the district attorney hasn't  
14 withdrawn the question.

15 Q Let him continue. There was more?

16 A I was just nervous. I was confused. There was lot of  
17 things going on my mind and a lot of questions confusing me, so  
18 whatever came out at that moment that's what I said.

19 Q You just told us a minute ago that someone asks me a  
20 question, I give an answer, right?

21 A Yes.

22 Q Okay. So she asked you about being hit and you said  
23 no, correct?

24 A Correct.

25 Q So it never happened, right, Mr. Delgado? Come on.

1 A It happened.

2 MR. CANTOR: Judge, may he stop approaching?  
3 He's badgering the witness. He's stepping up and he's  
4 raising to his magnificent height and intimidating the  
5 witness. Can he step back behind the podium?

6 THE COURT: You may continue.

7 MR. ROSENFELD: Thank you. May the record  
8 reflect I'm about twelve feet away.

9 MR. CANTOR: He doesn't have to step behind the  
10 podium?

11 THE COURT: If he doesn't choose to use the  
12 podium, that's fine.

13 Q Mr. Delgado, 30 months since the incident happened,  
14 for the first time as you sit here today, you're telling this  
15 jury that Sosa punched you twice around the face, the head,  
16 whatever?

17 A Yes, he did.

18 Q Never said, mentioned to anybody before?

19 A No, I didn't.

20 Q Never mentioned to Mr. Cantor before?

21 A No, I didn't.

22 Q Never mentioned to the DA before?

23 A No, I didn't.

24 Q Never mentioned to Detective Banker the two times?

25 A No, I didn't.

1 Q Mr. Delgado, he never punched you, come on.

2 A I don't gotta come up here and lie. People at the  
3 party saw what happened. They don't want to state what really  
4 happened because I was their friend. I was the only one -- I  
5 was the only one there by myself with my girlfriend. I don't  
6 gotta lie. I'm already locked up for a murder. I'm just  
7 stating what happened.

8 MR. CANTOR: Can I have that answer re-read?

9 MR. ROSENFELD: Not necessary, your Honor.

10 MR. CANTOR: Oh. He's the Judge.

11 THE COURT: One second. First of all, the answer  
12 hasn't been completed, but when it is, you can have it  
13 re-read.

14 MR. CANTOR: Thank you. Can he complete the  
15 answer?

16 A I got nothing else to say.

17 MR. CANTOR: Now can I have it re-read, your  
18 Honor?

19 THE COURT: Yes.

20 (Whereupon, the requested portion was read by the  
21 court reporter.)

22 Q Margie was there with you, right?

23 A Yes, she was.

24 Q You heard her testimony?

25 A Yes, she was.

1 MR. CANTOR: Judge, is this not repetitive? Is  
2 this not outside the bounds of recross?

3 THE COURT: No. I'm allowing it.

4 MR. CANTOR: I will imagine you are.

5 MR. ROSENFELD: Should I continue or are we going  
6 to respond to that?

7 THE COURT: Of course. You may.

8 MR. ROSENFELD: Thank you. What did I ask?

9 A You asked about Margie.

10 Q Yes. She was there with you, right?

11 A Yeah.

12 Q And you heard Melissa Dempsey testify and Mercedes  
13 Rodriguez and Alberto Vasquez?

14 MR. CANTOR: Judge, that's an improper line to  
15 ask a witness to comment upon the veracity of other  
16 witnesses. I object.

17 THE COURT: There's artful ways of asking the  
18 question. You may rephrase.

19 MR. CANTOR: Is that a sustained, your Honor?

20 THE COURT: At this moment, I'll sustain the  
21 objection; however, I'll allow the question to be re-posed.

22 MR. CANTOR: In its proper form.

23 Q You heard Melissa Dempsey testify at trial, correct?

24 A Yes.

25 Q And you heard Alberto Vasquez testify?

tr/g D. Delgado - Defense - Cross

1 A Yes.

2 Q Mercedes Rodriguez?

3 A Yes.

4 Q You told Margie -- I'm sorry. You told the DA that  
5 you got the knife to use against Sosa because he was bigger  
6 than me, right?

7 A Yes.

8 Q So you have the knife on you because you intended to  
9 use it, correct?

10 A No.

11 Q No. What were you going to do with it?

12 A I was just gonna pull it out, but since he attacked me  
13 so I used it.

14 Q Now, you took a knife from Margie's apartment. You  
15 didn't take a piece of soap, right, or a hair brush?

16 A No, I didn't.

17 Q You took a knife specifically?

18 A Yes.

19 Q A sharp knife?

20 A Yes.

21 MR. ROSENFELD: No further questions.

22 THE COURT: Mr. Cantor.

23 REDIRECT EXAMINATION

24 BY MR. CANTOR:

25 Q Did you take that knife for use in the event that you

1 had to engage in self-defense?

2 A Yes.

3 Q When you took the knife and Sosa came back into the  
4 apartment, did you immediately as he began threatening you  
5 again for the third time take that knife and plunge it into his  
6 body?

7 A No, I didn't.

8 Q It was after he had threatened you a third time, used  
9 his hands on you, it was only then that you said you used the  
10 knife to separate yourself from him?

11 A Yes, I did.

12 Q Did you ever have any intent to kill Sosa?

13 A No, I didn't.

14 Q Did you ever have any intent to cause serious physical  
15 injury to Sosa?

16 A No, I didn't.

17 Q Was your sole and exclusive intent to put distance, to  
18 separate yourself from Sosa who had been threatening you and  
19 touching you all evening?

20 A Yes.

21 Q Now, Mr. Rosenfeld touched upon a very sensitive area.  
22 You testified about conversations between you and me, did you  
23 ever tell Mr. Cantor that Sosa punched you? He opened that  
24 door. Now, I want you to --

25 A No.

1 Q Listen to me, will you. Can I complete a question?

2 A Yes.

3 Q We spoke many times about this case --

4 A Yes.

5 Q -- did we not?

6 A Yes.

7 Q Did there come a time immediately before trial, not in  
8 the beginning, that you told me as your attorney that Sosa had  
9 with a fist punched you twice.

10 A No, I didn't.

11 Q You never told me that?

12 A No.

13 Q Why?

14 A 'Cause at the moment I wasn't thinking what to say and  
15 wasn't really thinking. I was always nervous. I'm confused.  
16 Like I don't want to make it seem like if I'm lying, but I'm  
17 not, but I was just confused.

18 Q So you didn't even want to confide in your lawyer, you  
19 were so confused?

20 A Yes.

21 Q But as you sit there now, and these 12 people will  
22 judge you, do you understand that?

23 A I know.

24 Q And you spend 30 months thinking about this, correct?

25 A Correct.

1 Q Are you here now under oath? That means subject to  
2 the penalties of perjury and subject to even a high authority,  
3 are you telling the truth, the whole truth and nothing but the  
4 truth when you say Sosa punched you in the neck or chin twice?

5 MR. ROSENFELD: Objection.

6 THE COURT: Overruled. He may answer.

7 A Yes.

8 Q You've made some mistakes, correct?

9 A I have.

10 Q One of the mistakes that you did not make, and you  
11 tell me if I'm correct, is plunging the knife into Sosa with  
12 the intent to kill him?

13 A Correct.

14 Q One of the mistakes that you didn't make, and you  
15 correct me if I'm wrong, is plunging the knife into Sosa with  
16 intent to cause serious physical injury to him?

17 A I wasn't trying to hurt him.

18 Q You were trying to separate yourself from him?

19 A Yes, I was.

20 MR. ROSENFELD: Objection.

21 THE COURT: I'll allow it.

22 Q You were trying to get out of that apartment without  
23 Sosa taking any further and more heightened physical action  
24 against you, is that correct?

25 MR. ROSENFELD: Objection. Leading.



1 THE COURT: It is leading, but I'll allow it.

2 Q Is that correct?

3 A Correct.

4 Q As you told the detective, you're sorry for this  
5 event, correct?

6 A Correct.

7 Q But it wasn't you who started with Sosa, it was Sosa  
8 who started with you, is that correct?

9 A Correct.

10 Q How many children do you have, by the way?

11 A I have six. Three girls, three boys.

12 Q Three girls?

13 A And three boys.

14 Q How young is the youngest?

15 MR. ROSENFIELD: Objection, your Honor. This  
16 isn't part of recross.

17 THE COURT: Sustained.

18 MR. CANTOR: Well, I'll move to reopen my  
19 redirect. I inadvertently forgot to ask.

20 Q So in a non-leading fashion, how many children do you  
21 have?

22 MR. ROSENFELD: Objection.

23 A Six.

24 Q How young is the youngest?

25 A She's ten.

1 Q How old is the oldest?

2 A She will be 17 in a couple of days.

3 Q I can't hear you.

4 A She will be 17 in a couple of days.

5 Q Where do they live?

6 A Three live here in Brooklyn and three in Puerto Rico.

7 MR. CANTOR: I have no further questions.

8 MR. ROSENFELD: Mr. Delgado, you don't support  
9 any of those children, do you?

10 A I can't.

11 MR. ROSENFELD: You've never given support for  
12 those children?

13 A Yes, I did.

14 MR. ROSENFELD: Weren't you asked when you were  
15 arrested by a representative of the New York Criminal  
16 Justice Agency whether you provide support for others and  
17 didn't you say no?

18 A The same questions that I don't understand, so I  
19 really don't recall stating that.

20 MR. ROSENFELD: So what part of the do you  
21 provide support for others don't you understand?

22 A I don't understand.

23 MR. ROSENFELD: What?

24 A I don't understand the question.

25 MR. ROSENFELD: Nothing further.

1 RE-REDIRECT EXAMINATION

2 BY MR. CANTOR:

3 Q When you were interviewed by the representatives of  
4 what's called the Criminal Justice Agency, you were in jail?

5 A Yes.

6 Q Were you in a position in jail to support anyone?

7 A No.

8 Q Had you in the past before you were jailed supported  
9 your children?

10 A Yes.

11 Q You love your children?

12 A Of course.

13 Q You want to see them achieve the best --

14 MR. ROSENFELD: Objection.

15 Q -- that they can?

16 MR. ROSENFELD: Outside the scope.

17 THE COURT: Sustained.

18 Q So you provided money support. Did you provide  
19 emotional support?

20 MR. ROSENFELD: Objection.

21 THE COURT: Sustain the objection.

22 MR. CANTOR: I'm sorry?

23 THE COURT: I sustained the objection.

24 Q Did you provide emotional support?

25 MR. ROSENFELD: Objection.

1 THE COURT: Sustained.

2 MR. CANTOR: Why? He brought it up.

3 MR. ROSENFELD: I never asked those questions.

4 MR. CANTOR: Judge, he brings up support.

5 THE COURT: It's sustained.

6 MR. CANTOR: Of course it's sustained.

7 Q You still love your children?

8 A Always.

9 MR. ROSENFELD: Nothing further, your Honor.

10 THE COURT: You may resume your seat, Mr.

11 Delgado.

12 (Whereupon, the witness left the stand and  
13 returned to the defense table.)

14 THE COURT: Mr. Cantor, does the defense have any  
15 further witnesses?

16 MR. CANTOR: Defense rests.

17 THE COURT: Defense rests.

18 The Court having previously ruled on the motion  
19 for a trial order of dismissal for a non-prima facie case,  
20 now that having been accomplished, then at the end of now  
21 the entire trial the Court reserves to the defense the  
22 usual motion regarding the elements of the crimes that will  
23 be submitted to the --

24 MR. CANTOR: Which are?

25 THE COURT: We'll go over them at the appropriate

1 moment.

2 MR. CANTOR: Thank you. So my motion which I  
3 will not elaborate, I reiterate it with the same force and  
4 effect as I had earlier and you're reserving on that.

5 THE COURT: No.

6 MR. CANTOR: You're not. You're denying it,  
7 you're granting it?

8 THE COURT: No. I'm not doing either. I will  
9 invite you at the right time to make it.

10 MR. CANTOR: I just made it with the same force  
11 and effect.

12 MR. ROSENFELD: Your Honor, I'm going to object  
13 to this colloquy.

14 THE COURT: There's no need to continue to  
15 comment.

16 MR. CANTOR: I'm not commenting. You made a  
17 statement.

18 THE COURT: I reserved for you so you can  
19 preserve the record. That's what I did.

20 MR. CANTOR: Okay.

21 THE COURT: I didn't say anything further.  
22 Now, will you both please approach.

23 (Whereupon, there was a discussion held, off the  
24 record, at the bench, among the Court, the assistant  
25 district attorneys, defense counsel, and outside the

1 hearing of the defendant and the jury.)

2 (Whereupon, the following takes place, on the  
3 record, in open court, in the presence of the Court, the  
4 assistant district attorneys, defense counsel, the  
5 defendant and the jury.)

6 THE COURT: Madam Forelady, ladies and gentlemen  
7 of the jury, we have now completed the entire trial. I  
8 will excuse you for the evening. Tomorrow I will turn to  
9 counsel and I will invite them to make their closing  
10 arguments where they will outline for you their impression  
11 of the evidence or the lack or insufficiency thereof and  
12 urge upon you the verdict they would like you to return.

13 And then of course the Court will give you the  
14 law which controls and the final analysis, and you will  
15 retire into your deliberations and find the facts of what  
16 happened here. You are the ones that pronounce what  
17 happened here who is seeking and who is telling the truth  
18 or something less than the truth and the Court will give  
19 you further instructions with respect to that tomorrow.

20 So I invite you to have a pleasant evening. I  
21 invite you to remember all of the cautions. I invite you  
22 now again most importantly rush to no judgment. You've  
23 heard and seen all of the evidence, true, but you haven't  
24 yet heard the summations, you haven't yet heard the law,  
25 you haven't yet heard each other, all of which are to your

1 final determination as to the guilt or non-guilt of this  
2 gentleman Mr. Delgado.

3 So we'll see you tomorrow. Be here at 9:30  
4 sharp. All right. So we can get immediately under way.

5 A JUROR: I have a question.

6 THE COURT: Yes.

7 A JUROR: When does deliberation start?

8 THE COURT: The deliberations start after you  
9 hear the closing summations of both counsel and you hear  
10 the law from the Court.

11 A JUROR: Okay.

12 THE COURT: Then you begin your deliberations.  
13 Is that what you wanted to know?

14 A JUROR: I wanted to know when I could go back  
15 to work, that's why.

16 THE COURT: Well, that's up to the jury, how long  
17 do you want to stay and deliberate. And you should stay as  
18 long as you need, find it necessary. And when you make  
19 your final determinations, you announce them. You can tell  
20 your workplace that probably next week Monday.

21 A JUROR: Okay. Thank you.

22 THE COURT: All right. We'll see you then.  
23 Goodnight.

24 (Whereupon, the jury left the courtroom.)

25 THE COURT: The jury having been excused,

1 gentlemen, ma'am, we will now proceed to the charging  
2 conference. We'll start with you, Mr. Cantor, is there  
3 anything that you would like the Court to charge over and  
4 above the usual charges?

5 MR. CANTOR: Oh, yes. I think there's an ample  
6 evidentiary predicate for your Honor to charge manslaughter  
7 in the second degree both on the videotape, which is in  
8 evidence, and based upon my client's testimony that he  
9 blacked out when he inflicted the stab wounds. It's both  
10 on the videotape. It's in his testimony. Testimony of the  
11 People's witnesses indicate that it was a wild soiree.  
12 There was a lot of drinking, a lot of dancing and my client  
13 testified that he didn't know how many stab wounds he  
14 inflicted. He didn't know what portion of the body they  
15 were inflicted.

16 The medical examiner didn't know the order of the  
17 infliction of the wounds. But most importantly there, it's  
18 ample evidence for a jury to conclude that my client acted  
19 recklessly in causing the death of the deceased, and thus  
20 we ask your Honor to charge manslaughter in the second  
21 degree, reckless homicide.

22 We further ask your Honor --

23 THE COURT: One second. I want to take them one  
24 at a time.

25 MR. CANTOR: Yes.



1 THE COURT: Mr. District Attorney.

2 MR. ROSENFELD: Your Honor, the People would  
3 oppose that motion. It's clear the defendant brought a  
4 knife back to the party. It's clear that he swung at the  
5 deceased not just one time, but five times, deliberately at  
6 the head of the deceased, striking him all five of those  
7 times. This is not a reckless homicide. In fact, the fact  
8 that Mr. Cantor characterizes it as a wild soiree, it was a  
9 Christmas Eve party, people dancing and drinking. That  
10 doesn't change anything or affect the charge on it.

11 The fact that the defendant didn't know how many  
12 times or he says didn't remember how many times he swung at  
13 the deceased does not suddenly make this a reckless case.  
14 The intent can clearly be inferred by his actions in having  
15 the knife on him deliberately pulling the knife out of the  
16 pocket, swinging at the deceased and hitting him five times  
17 in the head. He talks about falling on the deceased. We  
18 know from the testimony he continued to attack the  
19 deceased. This is not reckless.

20 MR. CANTOR: It didn't --

21 THE COURT: I don't want to hear anymore on that.  
22 I'll reserve and I'll give you my determination. Next.

23 MR. CANTOR: Judge, I'm going to tell you now,  
24 you expect me to sum up tomorrow.

25 THE COURT: Yes.

1 MR. CANTOR: The law provides you tell me prior  
2 to my preparation of summation what you're going to charge.

3 THE COURT: Of course it does.

4 MR. CANTOR: Okay. So I just want to make the  
5 case. I want to correct misstatements. And the  
6 misstatements are that there were five stab wounds not all  
7 to the head, to the throat as well, and of the five stab  
8 wounds four were innocuous, would not have caused any  
9 death, would have caused some pain. There was only one.  
10 There had been lots of drinking. Sosa was inebriated. My  
11 client was inebriated. My client has testified on the  
12 stand that he blacked out. The videotape provides that.  
13 All People's witnesses indicated that there was drinking  
14 galore and that my client had been threatened by Sosa.  
15 There is indeed overwhelming evidentiary predicate for a  
16 manslaughter in the second degree charge.

17 My second application is for a criminal negligent  
18 homicide charge. My client testified that he blacked out.  
19 He failed to perceive the substantial and significant risk  
20 what an infliction of five wounds on the head and/or the  
21 throat might cause.

22 There's ample evidence from my client, from the  
23 video, from the People's evidence that Sosa was totally  
24 inebriated. His actions speak of inebriation. My client,  
25 and this is uncontradicted, had six drinks of hard liquor

1 plus numerous cans of Coors beer. That is a classic and  
2 traditional case of criminally negligent homicide. My  
3 client failed to recognize the significant and substantial  
4 risk of the swinging of the knife to Sosa's throat or head.

5 Medical examiner testified that there were  
6 wounds, not lacerations, but bruises on the head that would  
7 be consistent with falling on a hard surface. My client  
8 has not been by way of any evidence accused of inflicting  
9 those. This is a classic case of murder in the second  
10 degree, manslaughter in the first degree, manslaughter in  
11 the second degree, criminally negligent homicide. Everyone  
12 was intoxicated. There was a soiree. There were numerous  
13 threats that had been made to my client, and there had been  
14 numerous touchings by Sosa, some innocuous touching,  
15 rubbing his stomach and some more painful and more harmful  
16 and more vigorous.

17 My client has an absolute right based on the  
18 evidentiary predicate developed in this case to have your  
19 Honor place in the hands of the jury a charge of criminally  
20 negligent homicide.

21 THE COURT: One each time, yes, please.

22 MR. ROSENFELD: We're back to manslaughter in the  
23 second degree. When we started, he talked about innocuous  
24 cuts, deceased's ear was sliced in half and his nose was  
25 sliced. Those are not innocuous cuts. Those are

1 deliberate cuts to the stab wounds to the neck, jugular  
2 vein, carotid artery, the other side of the neck and the  
3 back of the head.

4 Again, Mr. Cantor keeps referring to other people  
5 that was again this wild soiree in support of criminally  
6 negligent homicide where everyone was inebriated. We heard  
7 the testimony from the witnesses. We're not talking about  
8 a bunch of falling down drunks that don't remember  
9 everything that happened. You heard testimony from  
10 witnesses that remember specifically what happened. The  
11 fact at that time defendant claims he didn't remember how  
12 many times he hit the deceased or he blacked out at that  
13 point. He remembers everything else. He remembers  
14 bringing the knife to the party. He remembers the grabbing  
15 of the arm and the grabbing of the shoulder, the reaching  
16 into the pocket, deliberately pulling out the knife and  
17 swinging it. Those are not criminally -- that's not a  
18 criminally negligent homicide. No way fits into it.

19 The fact that -- I don't understand how he can  
20 say the contusions on the head are part of the criminally  
21 negligent homicide charge. The doctor said those could  
22 have been caused by hitting a hard surface or being hit by  
23 a fist, there's nothing criminally negligent homicide, and  
24 those weren't the cause of the homicide. The defendant  
25 created this situation. He was perfectly aware that he had

1 a sharp knife and was bringing it to the party. He wasn't  
2 unaware of failing to perceive risk of using the sharp  
3 knife or stabbing someone. So People oppose that request  
4 also.

5 MR. CANTOR: What the People do not intentionally  
6 tell you that when you consider the applications for a  
7 charge, that you must as a matter of law view the evidence  
8 in the light most favorable to the defendant. That is the  
9 law.

10 I'm also now asking you to charge intoxication.  
11 I can spend the next half hour here citing chapter and  
12 verse of intoxication. I'm asking you to charge this jury  
13 that they can consider whether or not my client was so  
14 intoxicated that he's incapable of formulating the intent  
15 to kill, formulating the intent to inflict serious physical  
16 injury, whether or not he was so drunk enough that that  
17 would lend to a finding of recklessness, which would be a  
18 constituent element of manslaughter in the second degree,  
19 and whether intoxication was such that would cause my  
20 client to act in a criminally negligent fashion.

21  
22 (Continued on next page.)  
23  
24  
25

## CHARGE CONFERENCE

1812

1 MR. CANTOR: They are akin to the doctrine of  
2 intoxication. I admit that if you favor me with rulings  
3 and you charge intoxication that may very inure to my  
4 client's detriments in connection with the charge of  
5 manslaughter second degree and criminally negligent  
6 homicide. I am sure you recognize that, but nonetheless if  
7 you can't have a whole loaf, Judge, sometimes half a loaf  
8 is better than none.

9 THE COURT: Let's do intoxication.

10 MR. ROSENFELD: Your Honor, I think the evidence  
11 was quite clear from the defendant's own mouth. He said,  
12 he was tipsy, felt a little dizzy.

13 I am sorry, Mr. Cantor is laughing. Should I  
14 continue or do you want to do it another time, Judge? I  
15 don't want to disrupt his laughter enjoyment.

16 THE COURT: Let's wait until he subsides.

17 MR. CANTOR: I have, subsided, done.

18 If you don't think there is intoxication in this  
19 record, permeating this record --

20 THE COURT: All right.

21 MR. ROSENFELD: Again, this goes to just because  
22 Mr. Cantor says something doesn't mean it is. So there is  
23 no evidence here that the defendant was so intoxicated that  
24 he was unaware of what he was doing or of being able to  
25 have the mens rea to commit the acts that he did. He

H-ljb

## CHARGE CONFERENCE

1813

1 clearly remembers everything that happened except for the  
2 one moment he says he blacked out while stabbing. He  
3 remembers right before everything, before the grabbing, the  
4 touching, the statements that were made. He testified  
5 himself that he walked from one building to the other has  
6 no problems. There is nothing here indicating that he was  
7 so intoxicated that that should be considered in this case.  
8 All he said was he had some drinks. At one point he says  
9 it was beers and some alcohol, other times its alcohol and  
10 some beers, but at no point did he say he was so  
11 intoxicated that he had no idea of what was happening or  
12 unable to control himself or knowing exactly what was  
13 happening immediately before or after and during the  
14 incident.

15 MR. CANTOR: That's a jury question, you see.  
16 All you have to determine is whether or not there is  
17 evidentiary predicate in this record during the testimony  
18 and the evidence in the light most favorable to my client  
19 whether intoxication is a charge that is warned, that's  
20 all. Manslaughter in the second degree is a jury question,  
21 whether or not he acted recklessly. Criminally negligent  
22 homicide is a jury question, whether he acted under  
23 circumstances that events criminally negligent homicide.  
24 All your duty is a very narrow one: Is there an  
25 evidentiary predicate for such charges and in coming to

H-1jb

## CHARGE CONFERENCE

1814

1 that determination I keep on harping upon the fact that you  
2 must view the evidence in the light most favorable to the  
3 defendant.

4 THE COURT: Your next request?

5 MR. CANTOR: And when you charge intoxication I  
6 am asking you not only to incorporate alcohol, but  
7 medicine, psychotropic medicine. I am not asking you to  
8 use the term psychotropic, but there is testimony in this  
9 case unimpeded that he took medicine prior to going to the  
10 party to counter depression and bipolarity and medicine  
11 combined with an abundance of alcohol is a jury question to  
12 determine what effect that had upon my client's mens rea.  
13 So, of course, I ask you to incorporate that in the  
14 intoxication charge. Not to, not to charge intoxication in  
15 this case is tantamount to throwing a skunk in the jury box  
16 and you instructing the jury to disregard the odor.

17 THE COURT: Your next request?

18 MR. CANTOR: Justification of self defense,  
19 obviously. I don't want to elaborate upon that other than  
20 to say you must view in the light most favorable to my  
21 client.

22 THE COURT: Do you wish to contest that?

23 MR. ROSENFELD: Your Honor, there is no  
24 evidence -- there is evidence as far as justification goes  
25 and it's not called self defense it's called justification.

H-ljb



## CHARGE CONFERENCE

1815

1 There is no evidence that the deceased in any way had any  
2 attack -- had any weapon in his hand or had any -- let me  
3 get my thoughts together. I mean it was about to use any  
4 deadly physical force against the defendant. The defendant  
5 is the one who had the knife. The defendant is the one who  
6 used the knife on the deceased. The defendant kept saying  
7 he thought or I'm sorry, the deceased kept saying if you do  
8 something to Margie, if you disrespect Margie, if you in  
9 the future. There was no evidence that the defendant did  
10 any of those things. There is no evidence that the  
11 deceased was going to do anything to him. So, when he says  
12 he is justified in using deadly physical force against the  
13 deceased: One, he could have retreated in safety since he  
14 said he could have walked out the door and two, there was  
15 never any physical force -- deadly physical force about to  
16 be used against him by the deceased. Notice his hands were  
17 empty and he said there was nothing in the deceased hands  
18 at that time.

19 MR. CANTOR: What the DA conspicuously omits to  
20 bringing to this Court's attention is the writings of the  
21 Courts of Appeals in *People vs. Geotz*, which says that  
22 justification is a subjective/objective test. That a jury  
23 or a finder of fact must take into consideration the  
24 history, the background, the circumstances, the state of  
25 the environment and then once they take that all into

H-ljb

## CHARGE CONFERENCE

1816

1 consideration my client is not a marine, my client is not a  
2 marshal arts fighter, they must take into consideration all  
3 of the attending facts that are peculiar and subjective to  
4 my client and only then, once they have placed themselves  
5 in the shoes of my client, only then must they implore the  
6 objection -- the objective portion of justification. Given  
7 all of that it surrounds and it's attendance to and it's  
8 part of a history and upbringing of my client, only then  
9 and they place themselves, the jurors, in my client's  
10 moccasins, only then must they then address the question  
11 did under those circumstances Mr. Delgado act reasonably?  
12 That is the objective portion, the District Attorney  
13 conspicuously fails to mention that. Not to have a  
14 justification charge in this case would be a rank  
15 injustice. A rank injustice.

16 MR. ROSENFELD: If the Court is, your Honor, just  
17 to add to that, if the Court does charge justification it  
18 would have to be each and every one of the blows under  
19 Del -- I am -- Delbrio (phonetic)

20 THE COURT: I know.

21 MR. ROSENFELD: I don't have it in front of me  
22 and I am sorry I am mispronouncing it.

23 THE COURT: It would have to be to each of the  
24 five blows.

25 MR. ROSENFELD: To each of the five.

H-ljb

CHARGE CONFERENCE

1817

1 THE COURT: Hold on. Now, Mr. Cantor, you have  
2 anything else?

3 MR. CANTOR: Of course, you are going to have to  
4 charge -- no, I await your ruling. I know that you must  
5 charge that the People must prove mens rea beyond a  
6 reasonable doubt with respect to murder in the second  
7 degree or manslaughter in the first degree, that I know.

8 THE COURT: Do you have any particular charge  
9 that you favor?

10 MR. CANTOR: I favor a charge that indicates that  
11 the mens rea, the state of mind of my client, is an element  
12 of murder in the second degree and manslaughter in the  
13 first degree and his state of mind must be proven with  
14 respect to murder beyond a reasonable doubt -- with respect  
15 to murder in the second degree that he intended to kill  
16 Sosa and with respect to manslaughter in the first degree  
17 that he intended to inflict serious, physical injury on  
18 Sosa and I am now entitled because I am about, I don't know  
19 10, 15, 20 minutes from leaving this courtroom and  
20 preparing my summation, I am entitled by law to know what  
21 your Honor favors.

22 THE COURT: Didn't we answer this earlier?

23 MR. CANTOR: And you said, yes, you would.

24 THE COURT: I am going to do it.

25 MR. CANTOR: And may I be seated with your

H-ljb

## CHARGE CONFERENCE

1818

1 permission?

2 THE COURT: Yes, of course.

3 Now, we turn to the People. Any particular  
4 request for charge over and above the usual charges that  
5 are applicable to the case?

6 MR. ROSENFELD: Well, again, I haven't been  
7 before the Court in awhile, I am sure the usual charges  
8 include expert testimony, police officers testifying,  
9 *People vs. Geotz* must convict.

10 THE COURT: Over and above.

11 MR. ROSENFELD: Over and above all of those.

12 THE COURT: The Regular charges.

13 MR. ROSENFELD: Except for the fact that People,  
14 People have a right to speak with witnesses prior to  
15 testimony to discuss --

16 THE COURT: All part of it.

17 MR. ROSENFELD: Sometimes it isn't, sometimes  
18 it's not.

19 THE COURT: You may be seated, Mr. Cantor.

20 MR. CANTOR: I forgot something.

21 THE COURT: I will allow you to say it.

22 MR. ROSENFELD: Oh, yes, Judge, I mentioned  
23 before that Mr. Cantor in the middle of my cross jumped up  
24 about the *Sandova1* issue and said to the jury that the DA  
25 was violating the Court's ruling on *Sandova1*, which is a

H-1jb

## CHARGE CONFERENCE

1819

1 total and improper thing to say in front of the jury. He  
2 can point that out to the Court if he wishes, but however,  
3 the fact is that the People did not violate any of the  
4 Court's rulings and I would ask that the Court fashion a  
5 charge instructing the jury that the DA did not in any way  
6 violate any of the Court's rulings involving that issue or  
7 any other issues because we haven't.

8 MR. CANTOR: I am going to speak candidly, Judge.  
9 That's a fault that is shared by you and the prosecution.  
10 I heard the word parole. You would not give me an  
11 opportunity to go to the sidebar to preclude the rereading  
12 of that. You said at another time, at an appropriate time.  
13 There is no need to highlight the fact that the prosecution  
14 had heard the word parole. He was here at the *Sandoval*  
15 hearing and breached your ruling with regard to parole.  
16 That was never given by cue of permission to the People to  
17 question my client by way of parole. He is a lament. He  
18 mentions it, I hear it and may the People be seated if I  
19 have to be seated when asking? And the People heard the  
20 word parole, but of course, if you were not going to  
21 entertain an application at that point on the record at the  
22 sidebar and grant the People the opportunity to have the  
23 question reread it was reread, but there is one very  
24 important point: That a weapon -- you must I am going to  
25 suggest respectfully, charge voluntariness both of the

H-ljb

## CHARGE CONFERENCE

1820

1 written statement and the Q and A because my client  
2 testified, there is an evidentiary basis here that he was  
3 not given and read the *Miranda* rights until after he wrote  
4 out his statement. voluntariness then becomes a factual  
5 issue for this jury to determine with respect to the  
6 written statement and the videotaped Q and A and they must  
7 be charged upon that. Of course, there is an issue that  
8 has now been inserted into this record.

9 Thank you.

10 MR. ROSENFELD: This kind of becomes a ridiculous  
11 argument, your Honor. The defense keeps on insisting that  
12 the People submitted urging or keeps on doing this urging  
13 that we didn't. I am not going to belabor the issue. He  
14 jumped up to the Court, he turned to the jury, I ask the  
15 Court to give the appropriate instructions.

16 MR. CANTOR: I did not turn to the jury, I turned  
17 to your Honor. You are the arbitrator of law. I've heard  
18 so many statements and mischaracterizations by this  
19 prosecutor that it would take the *Hayden* laboratory and  
20 their telescope to accomplish the sole number of devious  
21 and deliberate acts of misconduct.

22 MR. ROSENFELD: I am not even going -- your  
23 Honor, I am tempted to respond to defense counsel's  
24 statements. He has been doing this throughout. The  
25 Court -- in respect to the Court and the record I am not

H-1jb

CHARGE CONFERENCE

1821

1 going to respond to any more, it's absurd.

2 THE COURT: Anything else, Mr. District Attorney?

3 MR. ROSENFELD: No, your Honor.

4 THE COURT: Okay. With respect to the defense  
5 requests for manslaughter in the second degree and reckless  
6 homicide the Court will not charge. Criminal negligent  
7 homicide the Court will not charge. Intoxication the Court  
8 will not charge. Justification the Court will charge on  
9 the side of the People, the requests.

10 MR. CANTOR: How about voluntariness, Judge,  
11 because --

12 THE COURT: Yes, on the *Miranda* the  
13 voluntariness.

14 MR. CANTOR: Yes, my client said he was not  
15 read --

16 THE COURT: He did.

17 MR. CANTOR: It's willing a evidentiary predicate  
18 and it's got to be viewed in the light most favorable to my  
19 client.

20 THE COURT: Yes.

21 MR. CANTOR: You must, I suggest on the law,  
22 instruct the jury on voluntariness.

23 THE COURT: All right. I think I left off saying  
24 justification, yes.

25 MR. CANTOR: Yes.

H-1jb

CHARGE CONFERENCE

1822

1 THE COURT: On the *Miranda* voluntariness.

2 MR. CANTOR: You have it in the record,  
3 uncontroverted.

4 THE COURT: My inclination is to charge it,  
5 that's my inclination.

6 MR. CANTOR: I need a ruling, Judge.

7 THE COURT: I will charge it.

8 MR. CANTOR: Thank you.

9 THE COURT: I think that covers everything.

10 MR. CANTOR: Indeed it does.

11 MR. ROSENFELD: What time tomorrow, your Honor --  
12 wait, your Honor, yes, what about that *Sandoval* request I  
13 made of the issue regarding his statement about my  
14 violating the Court's ruling?

15 THE COURT: Well, I am not going to make a --  
16 fashion any particular charge, but I will include it in a  
17 charge having to do with the parole -- the word parole with  
18 regard to speculation and so forth so...

19 MR. ROSENFELD: But will you include the People  
20 did not violate the Court's ruling as charged curiously by  
21 the defense? I am asking for that to be included.

22 MR. CANTOR: I am objecting.

23 MR. ROSENFELD: I don't want to mislead the jury.

24 MR. CANTOR: You will not, I am objecting because  
25 they certainly did.

H-ljb



CHARGE CONFERENCE

1823

1 THE COURT: All right. All right.

2 MR. CANTOR: They don't even know what *Sandoval*  
3 is.

4 MR. ROSENFELD: Who doesn't?

5 MR. CANTOR: Judge, I am schooled and not trading  
6 verbiage with the prosecutor. The jury doesn't know what  
7 *Sandoval* is.

8 THE COURT: Yes, I will give some.

9 MR. ROSENFELD: Thank you.

10 THE COURT: I will mention it, Mr. District  
11 Attorney, not at any length but I will mention it.

12 MR. ROSENFELD: Very good.

13 MR. CANTOR: Will you tell them that a  
14 stipulation is evidence?

15 THE COURT: Yes, it is. Of course, I will.  
16 Madam Sergeant?

17 THE SERGEANT: Yes.

18 THE COURT: Please have the gentleman up as  
19 quickly as you can.

20 Gentlemen, be here at quarter to ten, all right.  
21 I want to get on the way as quickly as possible.

22 Both of you has suggested closing statements  
23 anywhere from 40 to 60 minutes, which is fine, but let us  
24 be timely.

25 MR. CANTOR: I said 60 minutes, Judge.

H-1jb

CHARGE CONFERENCE

1824

1 THE COURT: I said 40 to 60 minutes, yes. He  
2 said 40 and you said 60.

3 We will see each other tomorrow, good night.

4 MR. CANTOR: Give me a moment, Judge. Give me a  
5 moment. I am constrained by virtue of the denial of the  
6 charge manslaughter in the second degree and criminally  
7 negligent homicide for you to charge extreme emotional  
8 disturbance.

9 THE COURT: Extreme emotional distress?

10 MR. CANTOR: Yes.

11 THE COURT: You saying anything else or is that  
12 the request?

13 MR. CANTOR: That's the request.

14 THE COURT: Sir?

15 MR. ROSENFELD: I am not sure the basis for that,  
16 your Honor, that the evidence supports that even though  
17 there was certainly no expert testimony, no medical  
18 testimony, nothing to indicate that the defendant at any  
19 time suffered extreme emotional disturbance.

20 MR. CANTOR: The evidence is replete with factual  
21 assertions that would well support that charge. Now, that  
22 doesn't mean that I am asking you not to give the regular  
23 ordinary charge with respect -- with respect to murder in  
24 the second degree; namely, proof beyond a reasonable doubt  
25 as to each and every constituent element including mens

H-ljb

CHARGE CONFERENCE

1825

1 rea. My application is that in addition to that that you  
2 charge extreme emotional disturbance.

3 THE COURT: I am not inclined to do so.

4 MR. CANTOR: And I am inclined to take an  
5 exception.

6 THE COURT: Okay.

7 MR. CANTOR: Thank you, your Honor.

8 THE COURT: You're welcome.

9 MR. CANTOR: The third count of possession of a  
10 weapon in the fourth degree?

11 THE COURT: Yes.

12 MR. ROSENFELD: Not necessary.

13 MR. CANTOR: You want to know something, Judge, I  
14 withdraw that application. The Indictment stands intact,  
15 let it be so charged. Let it be so charged by your Honor.

16 THE COURT: Anything you wish to say,  
17 Mr. District Attorney?

18 MR. ROSENFELD: What?

19 THE COURT: Anything you wish to say?

20 MR. ROSENFELD: No, your Honor.

21 THE COURT: You are going forward with that  
22 charge?

23 MR. ROSENFELD: I am sorry, I have not been  
24 thinking about it.

25 THE COURT: Why you don't think about it

H-1jb

CHARGE CONFERENCE

1826

1 overnight.

2 MR. ROSENFELD: Yes, will you include --

3 MR. CANTOR: I am entitled, so I am not asking  
4 for any -- I've noted my exception. Also, you have an  
5 Indictment with three counts. I am not asking that any one  
6 of those counts be withdrawn for the jury's consideration.

7 MR. ROSENFELD: Your Honor, I am just going to  
8 reserve overnight whether I want that to be included. We  
9 can plan to include and we can take two minutes to adjust.

10 MR. CANTOR: No, Judge, I have to prepare a  
11 lengthy closing summation, I am entitled by law to know now  
12 will that be charged? I am not requesting that it be  
13 withdrawn from the charge.

14 MR. ROSENFELD: I am going to leave it, Judge.

15 THE COURT: All right. We will leave it.

16 MR. CANTOR: Very well.

17 THE COURT: If you revisit tomorrow morning I  
18 will entertain it.

19 MR. CANTOR: Well, then I won't have an  
20 opportunity.

21 THE COURT: I will entertain it nonetheless.

22 MR. CANTOR: Well, then I will note my exception.

23 THE COURT: Of course.

24 MR. CANTOR: That and its violation of the Sixth  
25 Amendment effectiveness of counsel.

H-1jb

CHARGE CONFERENCE

1826A

1 THE COURT: Yes.

2 (Whereupon the trial is adjourned until Friday,  
3 July 6, 2012, at 9:45 a.m.)  
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H-ljb

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX : CRIMINAL TERM - PART: T-14

----- X

3 THE PEOPLE OF THE STATE OF NEW YORK,

Indictment #27/2010

4 - against -

Summation Charge

Verdict

5  
6 DAVID DELGADO,

7 Defendant.

8 ----- X

9 July 6, 2012

10 265 East 161st Street

11 Bronx, New York 10451

12 B E F O R E:

13 HONORABLE DOMINIC R. MASSARO,

14 J U S T I C E

(Appearances same as previously noted.)

15  
16 TRICIA L. ROBINSON, CSR, RPR  
17 Senior Court Reporter

18 (Whereupon, the following takes place, on the  
19 record, in open court, in the presence of the Court, the  
20 assistant district attorneys, defense counsel, the  
21 defendant and the jury.)

22 COURT OFFICER: Jury entering.

23 (Whereupon, the jury entered the courtroom.)

24 THE COURT: Good morning to everyone.

25 JURORS: Good morning.

1 THE COURT: Mr. Clerk.

2 THE CLERK: This is case on trial, People of the  
3 State of New York against David Delgado. Let the record  
4 reflect the presence of the district attorney's office,  
5 defense attorney, defendant and all sworn jurors.

6 THE COURT: Madam forelady, ladies and gentlemen  
7 of the jury, we now bring our proceedings to a close with  
8 summation by counsel. The Court will invite each counsel  
9 to make his argument and they will each respectively make  
10 that argument to you urging upon you their interpretation  
11 of the evidence or the lack or insufficiency of evidence,  
12 and likewise urging further that you return the verdict  
13 they would like you to see. We will do it now in reverse  
14 and I'll call upon defense counsel, Mr. Cantor first and  
15 then the district attorney thereupon.

16 When we complete that, the Court will instruct  
17 you on the law and you'll be given the case so to speak to  
18 begin your deliberations as to the guilt or non-guilt of  
19 Mr. Delgado with respect to the charges that the Court will  
20 instruct you on. For closing argument, I call upon Mr.  
21 Defense Counsel, Mr. Cantor.

22 MR. CANTOR: Mr. Justice Massaro, Mr. Delgado,  
23 Madam forelady, ladies and gentlemen of the jury, it's an  
24 onerous very hard, very difficult task that will be imposed  
25 upon you. I do not envy you. I do not envy you for a

1 moment. The weight of my client rests in your good hands.  
2 A trial has been described as a search for the truth, but  
3 that's not what it really is. It's a reconstruction of  
4 events and episodes and incidents that occurred in the past  
5 in this case 30 months ago.

6 It is a rare occasion, rare indeed when you get  
7 the full and complete and absolute truth. Why? Because by  
8 human nature, when we're reconstructing events not of 30  
9 seconds ago, but of 30 months ago, we rely upon for the  
10 most part human beings who testify under oath. By nature,  
11 human beings' memory tends to recede and fade and change  
12 with the passage of time. That's irrefutable law of  
13 nature.

14 So now we have two and a half years later. There  
15 are certain matters here that are beyond contest, beyond  
16 challenge. They really are. For instance, Sosa received  
17 five puncture wounds, four of them would not have killed  
18 him or caused serious physical injury. One of them;  
19 however, on the surface, a small puncture wound, also  
20 punctured the aorta and the carotid artery. He bled to  
21 death. Your question, for which I don't envy you, is to  
22 determine the state of mind of my client, his intent, in  
23 short, at the time of the infliction of the wounds.

24 It is charged by the People in three counts, the  
25 first count being murder in the -- murder in the second



1 degree, that upon my client causing those punctures, he did  
2 so with the intent, oh, the fancy term, as I told you when  
3 I was selecting, as mens rea from the Latin term meaning  
4 the state of mind. The People charge that he did so with  
5 the intent to cause the death of Sosa and Sosa died.  
6 That's murder in the second degree.

7 People also charge manslaughter in the first  
8 degree. That is when the puncture wounds were rendered.  
9 My client was acting with an intent to cause serious  
10 physical injury. The Judge will define serious physical  
11 injury. The loss of a limb is serious physical injury.  
12 The wounding of a kidney such that it has to be removed is  
13 serious physical injury. Serious physical injury is what  
14 the words say. Serious. It's not a cut, or that requires  
15 one or two stitches. It's not a cut or abrasion or a  
16 bruise that requires the application of an Ace bandage. It  
17 requires a permanent dismemberment or rendering of the  
18 non-function of a key and vital and crucial bodily organ.  
19 So the People claim that my client inflicted these puncture  
20 wounds acting with the intent to cause the very serious  
21 physical injury.

22 Okay. Then the People as they often do throw in  
23 a third count that my client possessed a knife. He  
24 possessed this knife they say with the intent, mens rea, to  
25 use it unlawfully against another. So we have murder in

1 the second degree. The defense is really two-fold here.  
2 One, when my client left, it was completely absent from his  
3 mind an intent to kill Sosa. Second defense, and I'll get  
4 to that later on, is justification, which we all know and  
5 call self-defense, that he felt that he was about to  
6 sustain serious physical injury, if not deadly physical  
7 injury and thus he acted accordingly.

8 Same defense holds true with respect to  
9 manslaughter in the first degree. While acting with the  
10 intent to cause serious physical injury, my client caused  
11 those five puncture wounds which caused the death of Sosa.  
12 The defense, my client did not entertain, did not harbor,  
13 did not have at the time of the infliction of those  
14 puncture wounds an intent to cause serious physical injury  
15 to Sosa.

16 The third count, possessed a knife with the  
17 intent, mens rea, with the intent to use the same  
18 unlawfully against another. The defense is my client never  
19 intended to use it unlawfully against another. He did  
20 intend to use it by way of self-defense, if necessary. And  
21 he never while possessing that knife did it with the mens  
22 rea, with the intent, to use it unlawfully against another  
23 unless and until circumstances warranted it.

24 So let's get to self-defense because that is a  
25 very, very for lay people perhaps complicated defense. It

1 has two criteria: One is objective. What do I mean by  
2 objective? And the other is subjective. What do I mean by  
3 subjective? Subjective means my own personal thoughts,  
4 experience, history. A subjective thought, like a very  
5 bold striking color such as juror number 12 is wearing by  
6 way of, be it a scarf or sarape or whatever. It's  
7 subjective. It's my opinion. It exists based upon my  
8 experience, my interaction, my history. What is objective?  
9 Objective is the summertime usually brings heat. It's an  
10 immutable fact of life. The wintertime usually brings  
11 cold. So subjective and objective.

12 Do you remember when I was selecting this jury I  
13 told you in my voir dire again, legal ease, it just means  
14 selecting a jury, questioning a jury and getting answers  
15 from a jury. So I said you have to take your defendant as  
16 you find him. Is he a CEO of a large corporation? No. Is  
17 he a graduate of a host of Ivy League colleges? No. Is he  
18 a respected and renowned theologian? No. He's David  
19 Delgado. So you have to listen to what makes David Delgado  
20 tick. That's the subjective. That's the subjective  
21 element. In other words, you have to stand in the shoes of  
22 David Delgado as he stood in those shoes on December 25,  
23 '09 at the party.

24 What do we know? We know at the time of the  
25 party he was 39 years of age. We know that he was five

1 foot and still remains five foot six. You saw him stand.  
2 Sosa was six feet tall, half a foot taller. That's just  
3 one factor. My client mentioned that many times on the  
4 stand that he was fearful for his life because this was a  
5 larger man, a bigger man.

6 You have to go back a little further. You have  
7 to know David Delgado grew up being sexually abused for  
8 three years by his step-father. What does that mean?  
9 There's no sex charge in this indictment. It means that he  
10 was emotionally, mentally scarred for life. For life. All  
11 of us are unique unto ourselves. All of us are different.  
12 We bring to bear different lives, experiences, different  
13 histories, different interactions, different stories. You  
14 judge David Delgado's sincerity and reluctance to testify  
15 about that. It's nothing to be proud of because of shame,  
16 integrity.

17 THE COURT: Would you like some water, sir?

18 MR. CANTOR: As I once told you earlier, I prefer  
19 a gin and tonic, so if you're offering I'm accepting.

20 THE COURT: I can only offer what I have at hand.

21 MR. CANTOR: Another day, another time. So it  
22 causes shame and degradation and self humiliation and stays  
23 with you for the rest of your life.

24 David Delgado is a troubled soul with a fragile,  
25 delicate, almost feeble mind. Is he sane? Of course he is

1 sane. I'm not pleading insanity here. Ask him where he  
2 is, he will tell you he's in a courtroom in Bronx County on  
3 the third floor with Justice Massaro presiding over a jury  
4 of twelve regular jurors and one alternate. He's sane as  
5 the day is long. That doesn't mean he has a strong -- he  
6 has a mind of iron with a firmament of steel. Three times,  
7 three times he attempted suicide.

8 Remember when I was selecting you as jurors, I  
9 told you about a conversation I once had with a physician.  
10 He was describing to me the most painful diseases, maladies  
11 that can afflict a person, and he said tic douloureux, which  
12 is a facial nerve, excruciatingly painful, he said cancer  
13 of a vital organ, even more fatal, can't cure it, can't  
14 subside the pain and then he said depression.

15 MR. ROSENFELD: Objection, your Honor. That's  
16 testifying about some possible medical testimony.

17 THE COURT: The jury will make the final  
18 determination.

19 MR. CANTOR: I said to him depression, how can  
20 depression be so painful? And he said to me, Bob, think  
21 about it, depression could be so painful that it can cause  
22 an individual to take his or her life.

23 MR. ROSENFELD: Objection, your Honor.

24 MR. CANTOR: That's how painful.

25 THE COURT: It's argument. The jury will weigh

1 it.

2 MR. CANTOR: That's how painful it is. When here  
3 we have a young man three times attempted suicide, twice  
4 mentally institutionalized, diagnosed with suffering from  
5 depression and bipolarity, bipolarity meaning highs and  
6 lows, manic in which the word maniac is derived and lows.  
7 Manic you could go at it, draw a man or a woman of ordinary  
8 income and like Imelda Marcos purchase a hundred shoes in a  
9 day, you're manic, you're very low, you're depressed, you  
10 won't eat, you won't speak. You won't get out, you won't  
11 interact.

12 MR. ROSENFELD: Again, I'm objecting to defense  
13 testifying as to medical testimony that doesn't exist in  
14 this case.

15 THE COURT: All right. Be guided.

16 MR. CANTOR: So you have a man who's both  
17 bipolar, swinging through highs and lows, and you have a  
18 man who suffers in depression, and depression is not a flaw  
19 in character. It is a flaw in chemistry. Well, also this  
20 brings, there's testimony to this effect, took medications  
21 to combat the depression and the bipolarity. He took mood  
22 stabilizers for bipolarity and medication to quell, meaning  
23 to snuff out, the depression. So this is the type of man  
24 that you have to put your feet in his shoes with that  
25 history, with that background.

1           And then this man, this young man who his six  
2 children finally gets lucky a little bit in life. He meets  
3 a woman who he likes, who he enjoys, becomes romantically  
4 involved in and her name is Margie, and they start going  
5 out for two, three months. Isn't that wonderful. Love can  
6 virtually, virtually cure many a disease. Margie and he  
7 are invited to a party. Now, he's depressed Margie says  
8 prior to going to the party because he's spoken to his mom  
9 and his children over the phone in P.R. and he's depressed,  
10 but Margie being a good mate, being a good lover, concerned  
11 over her mate, talks him out of it, come on, it will be  
12 good for you, you'll meet people, it's Christmas Day, it  
13 will bring you up.

14           So notwithstanding his initial reservations about  
15 going, he goes with Margie. And every single civilian  
16 witness called by the prosecution, every single one of them  
17 had something to say about Sosa, he was mean-spirited, he  
18 was angry, he was depressed, he was loud, he was waving his  
19 hands back and forth, he was confrontational, he was  
20 obnoxious. A girl 15 years of age, the daughter of the  
21 hostess of the party, says you've gotta leave. You're  
22 disrespecting our party and our people and our guests. And  
23 this is a friend to all of the people at the party except  
24 for my client. And thus he's taken from the apartment,  
25 loud, obnoxious, rude, interfering with the joy and the

1 meaning of Christmas Day. He's, in plain English, he's  
2 kicked out of the party, kicked out.

3 Okay. So he's kicked out of the apartment.  
4 Before he gets kicked out, Margie as a good mate, as a good  
5 lover does, she introduced him because he knows no one at  
6 the party. They're all strangers. He might have met one  
7 or two fleetingly on the street with Margie, might have  
8 introduced him and said hi and bye. So Margie introduces  
9 him, and when he extends his hand for the first time to  
10 Sosa, Sosa won't take it. It's Christmas Day. Sosa won't  
11 take it.

12 Here you have my client with a weak, delicate  
13 fragile impressionable mind, a stranger at the party, and  
14 all of the sudden he's being disrespected. The same thing  
15 that the young girl, the daughter of the hostess had said  
16 get out, you're disrespecting the party, you're  
17 disrespecting the people here. And of course the threat,  
18 the first threat. Excuse me. We have all been to social  
19 gatherings. We have all been to parties, and we have all  
20 been to parties and social gatherings where perhaps we  
21 don't know most if not all of the people. We're brought  
22 there by a friend, by a mate, whatever, and we try and act  
23 on our best behavior, do we not? It would seem normal.  
24 You want to act in your best behavior. Hello, I'm David.  
25 Sosa doesn't take his hand. And out of the clear blue sky,



1 like a thunderbolt, the first threat. What has David  
2 Delgado done to warrant a threat on his life, a threat on  
3 his physical well-being? What? What? He was asked at the  
4 party do you behave to Margie in a normal fashion, nice  
5 way, kind. Of course I was, she was my woman. Of course I  
6 was.

7 So now, I ask you good folks to ponder the  
8 question why the threat, why the belligerence? Why the  
9 bellicosity? Why the pugnaciousness? Plain English. Why  
10 the threat to my client's physical well-being, if not life?  
11 But you see you have to deal now with the subjective side  
12 of self-defense. Sosa is not making these threats to a  
13 hardened Marine colonel. He's not making these threats to  
14 a mercenary in the Congo. He's making these threats to a  
15 man with a weak, delicate, fragile and feeble mind, a man  
16 who suffers from bipolarity, a man who suffers from  
17 depression and had taken the medicine at Margie's house  
18 before going to the party. Sosa is not only threatening my  
19 client, he's threatening my client's life. He's pointing  
20 his finger at him first. What has David done? Read the  
21 record. Have the record read back. What has David in  
22 God's earth done to warrant such disrespect, such  
23 threatening behavior? Nothing. Nothing. But this is one  
24 of a mind of a man who suffers from bipolarity and  
25 depression, his attempted suicide, who's been mentally

1 institutionalized, who's been sexually abused as a  
2 youngster, and was smaller than Sosa.

3 I tell you now and I'm going to tell you later,  
4 David Delgado on the 24th of December carrying over to the  
5 25th of December '09, at that party, once he had the threat  
6 and he had that finger pointed at him only had one intent  
7 with respect to Sosa, to avoid him, to get ways to remove  
8 himself from Sosa, because each and every confrontation,  
9 three, and this is according to the People's witnesses,  
10 they had three, mind you, was initiated by Sosa. What pray  
11 tell must David have thought? What had poor David done?  
12 Had he antagonized? Had he humiliated? Had he  
13 disrespected anyone? No. Sosa by all accounts was as  
14 drunk as a human being could be and still remain on his  
15 feet.

16 You heard the medical examiner testify that he  
17 had by virtue of blood testing, by blood analysis of the  
18 autopsy, he had .27 of one percent of alcohol in his body.  
19 Legal limit for driving while intoxicated is .08. So he  
20 had more than three times greater amount of alcohol in his  
21 blood than the law allows him to drive in a car. If you  
22 want to go by the urine, the doctor says no, no, we don't  
23 go by the urine. But if you want to go by the urine, he  
24 had .39 of one percent, this is five times approximately  
25 greater than the legal limit when you're driving. Sosa is

1 drunk, obnoxious, interfering, endangering, threatening,  
2 doing everything short until the final threat when hands  
3 are laid on by Sosa.

4 So Sosa comes in, confronts, initiated David a  
5 second time, same threats, Margie's a good person, she's a  
6 friend, you fuck her up, I'm gonna fuck you up. One  
7 witness said Sosa said, me and my brothers we're gonna fuck  
8 you up, we're gonna put you down, we're gonna hurt you.  
9 What has David done? You tell me. You were here. You  
10 heard the evidence. Did he disrespect Margie? No. Did he  
11 disrespect anyone at the party? He's dealing with a  
12 maniac. He's dealing with a man who is announcing his  
13 intent and David does not know when that intent will be  
14 effectuated. Will it be in a minute? Will it be two  
15 minutes? Will it be five minutes? Will it be in ten  
16 minutes? But he's being threatened for a second time. And  
17 there's no ifs, ands or buts. My God, you go to a party,  
18 you don't know anyone and someone comes over to you and  
19 threatens you with such grievous bodily harm, twice refuses  
20 to shake your hand, pointing your finger in your face.  
21 What impact must that have had on David's delicate,  
22 troubled fragile mind?

23 I'm going to give you a very important piece of  
24 information that you heard. You heard it so listen to it.  
25 If David Delgado had the intent to kill Sosa, or if David

1 Delgado had the intent to cause serious physical injury to  
2 Sosa, why did David Delgado show Alberto Vasquez the handle  
3 of the knife when he was pulling on his belt buckle, do you  
4 remember that? Does everyone remember that testimony?  
5 Alberto Vasquez was a stranger. He was a stranger. If  
6 you're gonna intend to put an end to these threats of  
7 violence and killing, why announce it to a stranger who is  
8 a very, very, very good friend of Sosa because Sosa had  
9 been selling him marijuana for ten, twelve years.

10 And Alberto Vasquez, you know there are times  
11 when strange things happen in courtrooms, strange things.  
12 He walks into this courtroom with the dark glasses like  
13 this is a Hollywood set, like he's having lunch on  
14 Hollywood Boulevard with Tom Cruise or something. He walks  
15 in here, this cool dude with his dark glasses, and of  
16 course he jumps through hoops. I'm gonna get everyone's  
17 attention. He jumps through hoops when the DA is examining  
18 him, no problem. Question, answer, question, answer,  
19 question and answer. Mr. Cantor begins cross-examining  
20 him, I'm not on trial, I don't have to take this shit, fuck  
21 this shit, I'm not here on trial. What is this all about?  
22 Fuck this shit. I don't care what you do. I'm leaving.  
23 I'm out of here, I'm out of here. Fuck this shit. Fuck  
24 this shit. He gets to about right here, the officers bring  
25 him back. He didn't voluntarily return to the stand.

## DEFENSE SUMMATION

1842

1 MR. CANTOR: You see once in a while, not too  
2 often you really do see the essence, the concern of truism  
3 that exists for the witness, what type of person that is,  
4 direct, nice and polite. You ask him a question he hops  
5 through hoops to answer. Shit, fuck, I am not on trial and  
6 I am leaving. I don't care what you do to me. Fuck you,  
7 I'm out of here. The reason that we go overall and Alberto  
8 Vasquez by any stretch -- by any observations is a man with  
9 a long, extensive history of crime. He is what is known,  
10 fancy word, as a recidivist or a sociopath, ones who  
11 constantly and continuously places his interests above  
12 those of society and you will hear his Honor instruct you  
13 that you may consider a person's prior involvement with the  
14 law in your evaluations of that person's believability.  
15 The fact that he stuck up a restaurant with a shot gun and  
16 took a -- all of 900 bucks has nothing to do with the party  
17 of December 24th, 25th. We all know that, but what it does  
18 have something to do with is the man's credibility,  
19 believability, sociopath, such a recidivist, such a violent  
20 person worthy of belief and worthy of trust and finding a  
21 reasonable doubt. That's the reason the law allows us to  
22 bring in a person's criminal record, but did I expect that  
23 reaction? I am a terrible liar, yeah, I did. I did expect  
24 a man who takes the stand with those Hollywood-type glasses  
25 and, you know, and he's got that tacky sort of jointed, you

B-1jb

## DEFENSE SUMMATION

1843

1 know, attitude. Did I expect that I could get under his  
2 skin? Yeah, I did and guess what, I did get under his skin  
3 and he reacted, the true nature of the man. So you can  
4 image that sort of a man at a party amongst friends with  
5 alcohol flowing, vodka, Hennessy and Bacardi flowing Coors  
6 Beer flowing, you can imagine that man's attitude. And he  
7 had smoked a blunt. Now for those of who you don't know  
8 what a blunt is it's not a marijuana cigarette, which they  
9 call a joint it's the small snubby cigar, you know, like a  
10 white Owl Cigar and in that snubby cigar, which is much  
11 bigger than a marijuana cigarette you put marijuana and you  
12 smoke it and this is a guy who has been doing this four,  
13 five times a day for 15 years and he is drinking upstairs  
14 at the party.

15 You have to be convinced. You have to be  
16 convinced. I was going to save this for the end, but I  
17 might as well tell you now. We opened up on this case, did  
18 we not, the district attorney opened up and he opened up  
19 first. An opening is not a mere recital of what one side  
20 intends to prove in court. An opening statement is a  
21 promise to the jury, it's an IOU and what did  
22 Mr. Rosenbaum -- Mr. Roosevelt -- he is as far from  
23 Roosevelt as I am. In any event, what did he say in his  
24 opening and I believe when it comes to the end of this case  
25 you will see beyond any reasonable doubt that the defendant

B-ljb

## DEFENSE SUMMATION

1844

1 is guilty. Beyond any reasonable doubt what People intend  
2 to prove. I beseech you, I employ you just use your simple  
3 common sense, your experience, your schooling, beyond any  
4 reasonable doubt the prosecution will prove David Delgado  
5 guilty of murder in the second degree, manslaughter in the  
6 first degree and criminal possession of a weapon in the  
7 fourth degree. It's a promise, has he kept it? Well, your  
8 verdict will tell us, won't it? Yeah, your verdict will  
9 tell us, will answer that question.

10 So here we go, we go to Melissa Dempsey. Melissa  
11 Dempsey on direct examination and jumping through hoops  
12 Melissa Dempsey says -- see, I am taking notes. I am  
13 sitting there, I am taking notes as fast as I can. I am  
14 not a stenographer, but I can write fairly quickly. So  
15 Melissa Dempsey says that Sosa and David were arguing. I  
16 get up and on cross examination and say, were they arguing,  
17 David and Sosa? She said no. I say, well, did you about a  
18 half hour ago tell the district attorney on direct  
19 examination that they were arguing? No. I mean some  
20 witnesses (indicating) it's a joke book, it's a comic book.  
21 It means nothing (indicating), it means absolutely nothing.  
22 I have to call her back at the end of the People's case,  
23 continue my examination because I did not have the  
24 transcript (indicating) of what she had said, you know,  
25 like 20 minutes earlier in my hand, but the next morning I

B-1jb

## DEFENSE SUMMATION

1845

1 had it, right, and sure enough I read to her from the  
2 transcript and there, what is the word that she used on  
3 direct? Arguing. I believe they were arguing. She had to  
4 admit it because it's an official --

5 MR. ROSENFELD: Objection, your Honor, it was not  
6 testimony, a thought --

7 MR. CANTOR: It was.

8 THE COURT: All right.

9 MR. CANTOR: It was an official --

10 THE COURT: Continue.

11 MR. CANTOR: -- official certified transcript of  
12 a court reporter and she was in a corner and she had to  
13 admit it. I -- I don't understand. I -- I just -- I can't  
14 get into the mind of a witness who has such disrespect and  
15 is so insulting of 12 good people, 12 good people didn't  
16 hear her say arguing. So I literally ran it down her  
17 throat and, of course, she has to swallow it. It's a  
18 bitter pill and these are the People's witnesses and she  
19 was the witness, Melissa Dempsey who would jump through  
20 hoops and answer the People's questions. Question answer  
21 question answer, but on cross examination she wouldn't let  
22 me finish a question. Would not let me finish a question  
23 before she jumped out with the answer. She did, however,  
24 when pressed by me because I had (indicating), I had it in  
25 my hand (indicating), it's the official court transcript.

B-1jb



## DEFENSE SUMMATION

1846

1 she had to admit it and she had to swallow that pill. And  
2 you are going to be called upon to assess the believability  
3 of and reliability, not just believability, but  
4 reliability, accuracy, in other words, of witnesses and one  
5 of the ways that you do that is when a witness says, no, I  
6 never said that word. I never said that word. Never,  
7 never, never and then, of course, in black and white she  
8 admits it.

9 So we're going to be finish with Melissa Dempsey  
10 and we are going to go onto Alberto Vasquez, the next  
11 witness called by the People. Blunt smoking, three or four  
12 blunts per day and he had been doing that for 15 years. He  
13 was drinking at the party. He was high. He had a buzz.  
14 Sosa was upset, having problems with his common-law wife.  
15 Sosa was angry, loud and threatening. I've condensed about  
16 50 pages. I read the transcript twice, but I've condensed  
17 it because I can't be up here for three hours. God knows  
18 this phone will ring again and I won't be able to shut it  
19 off, but here is the point, I am condensing it, I am giving  
20 you the core, the essence, okay. And then, of course,  
21 Alberto Vasquez says, you know, you got people saying the  
22 music is loud. You got people saying the music was medium.  
23 You got people saying that the music was not that loud,  
24 it's all over the place. This was a small, confined  
25 quarters, one bedroom, one living room, one kitchen, one

B-Tjb

## DEFENSE SUMMATION

1847

1 dining area. They're about, I don't know, including kids  
2 maybe about 20 people at the -- this party. It's a very  
3 small, condensed apartment and there are lots of people in  
4 there. So I've already told -- I've already told you good  
5 people if David Delgado, the People allege that the intent  
6 to cause the death of Sosa or have the intent to cause  
7 serious physical injury to Sosa that eventuated in his  
8 death or possessed a knife with the intent to use it  
9 unlawfully against another why in God's name would you put  
10 faith in a stranger, in Alberto Vasquez, in a complete  
11 stranger to David Delgado, why would you put him on notice  
12 with the belt buckle (indicating), so you can see the  
13 handle of it? It doesn't make sense. It defies logic.

14 THE COURT: Mr. Cantor.

15 MR. CANTOR: Yes.

16 THE COURT: I am sorry to interrupt you.

17 Mr. Rosenfeld.

18 MR. CANTOR: what? what? I am --

19 (whereupon there is an off-the-record  
20 discussion.)

21 THE COURT: Sir, would you like to be excused for  
22 a few moments?

23 (whereupon a juror exits at this time and there  
24 is a pause in the proceedings.)

25 MR. CANTOR: You got to roll with the punches

B-1jb

DEFENSE SUMMATION

1848

1 folks.

2 MR. ROSENFELD: That's not necessary, Judge.

3 THE COURT: Please be seated while we await the  
4 juror's return.

5 (Whereupon there is a pause in the proceeding.)

6 THE COURT: Please continue, Mr. Cantor.

7 MR. CANTOR: I understand. It's not an easy  
8 thing to be defending a man charged with such serious  
9 crimes and I put all and I apologize, I put all of my  
10 effort, I put all of my being into it and you may agree  
11 with me, you may not agree with me, but all I beseech of  
12 you is listen to me and then make up your own mind. Just  
13 listen. Whether you remember Mr. Rosenfeld when he was  
14 selecting this jury along with me said, well, we don't have  
15 the knife and the fact that we don't have the knife we'll  
16 let you -- will that prevent you from being fair and  
17 impartial and will that stop you if we prove guilt beyond a  
18 reasonable doubt, voting guilty and everyone said no, but  
19 how about effort to find the knife? How about that? This  
20 guy, Alberto Vasquez, never saw the cops search for the  
21 weapon. Never. No witness aside and I will get to the  
22 good detective, the good detective. None of the witnesses,  
23 the lay civilian witnesses saw the cops search for a knife.

24 We next go to Mercedes Rodriguez, a woman since  
25 1985 was on public assistance and she had asked David how

B-1jb

## DEFENSE SUMMATION

1849

1 he met Margie and the defendant was civil and he was  
2 courteous and he was not angry and he said we met at a  
3 laundromat and we have been going out for two to three  
4 months. Now, Mercedes was not mean or nasty or violent to  
5 David and David likewise answered kind and civilly and  
6 courteously we have been going out for two, three months  
7 and we met in the laundromat. This is the same woman,  
8 Mercedes, who said she ran down the hall and saw a blade of  
9 a knife that was approximately three-and-a-half inches in  
10 length. Three-and-a-half inches in length. Mercedes was  
11 the woman who got on the telephone and called 9-1-1. She  
12 was so discombobulated. You see she was so upset. She was  
13 so, in her mind, mixed and incapable of carrying on an  
14 intelligent conversation because of the horrendous events  
15 of seeing her friend Sosa bleeding to death having had six  
16 drinks. This is a woman who had hustled on the street  
17 earlier, sold marijuana and heroin and she says that David  
18 walked down the hall, didn't run, yet you have to believe  
19 me. I beg you. Don't believe me ask it to be reread, you  
20 are entitled. You are entitled to have the entire  
21 testimony of the entire case reread. Said David was  
22 walking down the hallway. She said she caught up and David  
23 gave her the elbow and Mercedes wouldn't mind if David  
24 spends the rest of his life in prison.

25 We come now to the only civilian witness who

B-1jb

## DEFENSE SUMMATION

1850

1 didn't drink alcohol, therefore, you can draw an inference  
2 that this is a witness with a clear, lucid mind and sense  
3 of recollection who doesn't drink alcohol. Who told you  
4 she never drank? Margie. Margie. Before they went to the  
5 party Margie told you that David was depressed, it was  
6 Christmas, he had spoken to his family in Puerto Rico and  
7 David went to the party and she says that after the third  
8 threat uttered by Sosa to David and she was right by David,  
9 David was scared. He was shaking. He was nervous. Well,  
10 who wouldn't be? If a complete stranger came over to you  
11 in a party and made threats to you and poked (indicating),  
12 poked you. You see these four fingers (indicating) in your  
13 shoulder and had punched you as David testified. You see  
14 David, if he was going to make up a lie he could have said,  
15 oh, this guy Sosa had taken his hands and put it around my  
16 throat and was choking me and I was feeling faint and I was  
17 feeling on the verge of unconsciousness because David had  
18 drank a lot. Don't forget he had six, six hard liquors and  
19 Coors beer. So if David really wanted to lie he could have  
20 made Sosa's physical actions against him much more  
21 heightened. That he grabbed him around the throat and was  
22 just squeezing the life out of him, but no, he told you the  
23 truth as he recollects it. You sit in a jail cell for 30  
24 months and think about the one thing that's keeping you  
25 there and it gets embedded. It becomes indelible in your

B-1jb

## DEFENSE SUMMATION

1851

1 mind and you didn't tell it to the cop or the D.A. He is  
2 in a small room with a cop with a gun, with a D.A.  
3 technician and assistant district attorney and even David  
4 with his troubled, fragile, delicate mind he must have  
5 grasps that the assistant district attorney was a  
6 prosecutor and what do prosecutors do? They prosecute.  
7 Their goal is to gain convictions, put people in jail. You  
8 don't think he was nervous? Well, sometimes nerves  
9 admittedly, sometimes nerves are not displayed exteriorly.  
10 You know what I mean? You get the butterflies in your  
11 stomach. Now no one can see that, but you can feel it.  
12 Your whole being tenses up. It's not on your face, but  
13 inside. Did you ever get a knot in your stomach? You were  
14 so nervous, so scared, so frightened? So this -- he is in  
15 this small room.

16 What does Margie also tell you? Three threats by  
17 Sosa and Sosa hit David one or two times on the face,  
18 that's what Margie said. Margie come on -- you see in  
19 order to gain your confidence, in order to gain your vote I  
20 have to tell you everything, what's good for me and what's  
21 bad for me so that you can say in that jury room that  
22 Cantor is a candid man, is a frank man, is a forthcoming  
23 man. So she says and she is the only one who hadn't drunk.  
24 That Sosa hit him one or two times in the face and jabbed  
25 his shoulders. David admits to you he never told about the

B-ljb

## DEFENSE SUMMATION

1852

1 two hits in that little room, you know, the five by ten  
2 room where they were taking the statement stenographically  
3 and video. Oh, no, no, it wasn't stenographically it was  
4 just video recordings, which is even better than the steno  
5 because you can see it on the screen. See it on the  
6 screen.

7 You get Banker a retired Detective. Banker you  
8 are going to get a glimpse of the truth here. You see if  
9 this is a reenactment, this is a reconstruction of what  
10 happened 30 months ago. You saw no person with a knife  
11 here. You saw no person threatening another person here.  
12 We are reconstructing events of two-and a-half years ago  
13 and Banker is coming across like a sweetheart, he's tanned,  
14 he's fit, he is well preserved. You saw the man and on  
15 direct examination he just casually, casually in passing,  
16 well, I've retired from the police department. I hurt my  
17 back, I have some fusion surgery. Mr. Cantor's cross  
18 examination, you're out on three-quarters disability. The  
19 witness' low voice, no one can hear him all of a sudden, is  
20 talking to the judge. Court reporter can't even take that  
21 down. Aren't you not suppose to be working if you are on  
22 three-quarters disability, sir? (indicating) his demeanor  
23 changes all of a sudden. He is not the smooth, articulate,  
24 retired, slim and fit mustachioed witness is he? You want  
25 to know why, because it's a crime to be working and gaining

B-1jb

DEFENSE SUMMATION

1853

1 money on --

2 MR. ROSENFELD: Objection, your Honor.

3 MR. CANTOR: On or off --

4 MR. ROSENFELD: Objection.

5 MR. CANTOR: -- full on three-quarters  
6 disability.

7 THE COURT: The Court will give you --

8 MR. CANTOR: You are double dipping, that's  
9 against the law.

10 MR. ROSENFELD: Objection, that is defense  
11 testifying to something that is not in evidence.

12 THE COURT: Mr. Cantor.

13 MR. ROSENFELD: That is not true.

14 THE COURT: Mr. Cantor --

15 MR. CANTOR: Its against the law.

16 THE COURT: Mr. Cantor, wait for a ruling.

17 MR. CANTOR: Yes, he --

18 THE COURT: Please move on.

19 MR. CANTOR: I am moving on. He, Banker, all of  
20 a sudden looses his cool and is engaging in his whispering  
21 and conversation with the judge. He is very nervous, very  
22 nervous and you want to know why? Perjury.

23 MR. ROSENFELD: Objection, your Honor.

24 MR. CANTOR: Perjury.

25 MR. ROSENFELD: This is totally improper.

B-1jb



DEFENSE SUMMATION

1854

1 THE COURT: Yes.  
2 MR. CANTOR: Perjury.  
3 MR. ROSENFELD: Your Honor, he is inclining --  
4 MR. CANTOR: Perjury.  
5 MR. ROSENFELD: Your Honor.  
6 THE COURT: Please, Mr. Cantor, please.  
7 MR. CANTOR: Perjury.  
8 MR. ROSENFELD: He is doing --  
9 MR. CANTOR: I have to comment upon the  
10 credibility and believability of witnesses.  
11 THE COURT: You may do that.  
12 MR. ROSENFELD: And it's improper.  
13 MR. CANTOR: And he --  
14 MR. ROSENFELD: I object.  
15 MR. CANTOR: Of course, he is banging on the  
16 table.  
17 THE COURT: I will.  
18 MR. ROSENFELD: Thank you.  
19 MR. CANTOR: I told you when I selected this jury  
20 you got the law, you bang on the law. If you have the  
21 facts as you say you pound on the fact. If you have  
22 neither the facts or the law you pound the table, that's  
23 what this prosecutor has been doing throughout this case.  
24 MR. ROSENFELD: Objection.  
25 MR. CANTOR: Pounding on tables.

B-1jb

DEFENSE SUMMATION

1855

1 MR. ROSENFELD: It is improper.

2 THE COURT: Mr. Cantor, please, no  
3 personal attacks --

4 MR. CANTOR: Now to --

5 THE COURT: -- to the district attorney or anyone  
6 else.

7 MR. CANTOR: Now, we have Banker on cross -- on  
8 direct examination, well, he has a different hair do so I  
9 wanted to be fair. I am a fair police officer. I am so  
10 fair I put baseball caps on him and it means nothing. It  
11 means nothing. It just shows that the 11 times that's he  
12 spoke by telephone or in person to A.D.A. Rosenbluth --

13 MR. ROSENFELD: Your Honor, at least get my name  
14 right.

15 MR. CANTOR: It is Rosenfeld.

16 MR. ROSENFELD: Three times he has misstated my  
17 name.

18 MR. CANTOR: It's Rosenfeld.

19 MR. ROSENFELD: Your Honor, this is improper.

20 MR. CANTOR: What, that I mispronounced his name?

21 MR. ROSENFELD: He can't remember to get it  
22 straight.

23 MR. CANTOR: I would like to forget his name for  
24 all eternity, Judge.

25 THE COURT: Oh, please, Mr. Cantor.

B-1jb

DEFENSE SUMMATION

1856

1 MR. CANTOR: In any event --

2 THE COURT: Try to control yourself.

3 MR. CANTOR: Baseball -- you heard that,  
4 Mr. Rosenfeld, control yourself?

5 MR. ROSENFELD: Sure, I did.

6 MR. CANTOR: In any event, baseball caps. well,  
7 of course, when he looks at the picture it's not baseball  
8 caps its just plain ordinary caps, but here, perhaps gives  
9 you a insight into the fact that Banker is not a man of  
10 integrity and truthfulness and honesty. I, Cantor, cross  
11 examination, was the recovery of the gun important? No,  
12 no, no. And then the male prosecutor, whose name eludes me  
13 now, stands up on his redirect and says question, well, you  
14 looked in 3D? Yeah. You looked in the hallway? Yeah.  
15 You looked in the stairwell? Yeah. You looked in the  
16 street? Yeah. There comes a time it becomes insulting.  
17 You see you 12 people collectively have more intelligence  
18 and more wisdom collectively than any one single person who  
19 walks in here.

20 (Continues next page.)

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B-1jb

## Summations - Defense

1  
2 MR. CANTOR: That's why we have a jury of 12,  
3 collectively. You're intelligence is being  
4 omni-intelligence of anyone sitting here in this courtroom.  
5 And to say that, then to try and wiggle out of it, it gives  
6 you a notion, it gives you an insight as to the honesty and  
7 liability of the People.

8 And this male Assistant whose name, again, evades  
9 me, stood up and promised you that will prove beyond any  
10 reasonable, any reasonable doubt that the defendant is  
11 guilty.

12 Well, what else do we have? You see,  
13 conveniently, this assistant district attorney, the male,  
14 gets by way of questioning Detective Banker that there was  
15 a lineup held and various people came and he names them.  
16 You know, he names the people that were present, Melissa  
17 Dempsey. Alberto Vazquez, Mercedes Rodriguez.

18 You know, and then it's up to Mr. Cantor. I said,  
19 well, wait a moment, weren't there other people who came to  
20 look at the lineup? He says, yes. And I said give me  
21 their names. He says can I refresh my recollection? And  
22 he says Danielle Soly, Wilfredo Cruz, Carolita Jimenez. I  
23 never -- these names, never saw those witnesses.

24 It's the People's obligation to call witnesses to  
25 call their case. I don't have to have call witnesses. I

## Summations - Defense

1        don't have to put on proof, you know that. Why not bring  
2        out the full truth? Why not say witness A, B, C, D, E, F,  
3        G, H were there at the lineup even if you're not calling  
4        half of them? I don't know what they have to say. All I  
5        know is that there were important enough to be called to a  
6        lineup by the police and view a lineup but, yet, not called  
7        on the witness stand by the People and they have the burden  
8        of proving guilt according to his opening, beyond any  
9        reasonable doubt.

10                What is the ME, medical examiner doctor? She is  
11        just a professional witness for the prosecution. She's  
12        testified for the prosecution a 133 times. The Medical  
13        Examiner's Office is an independent office. It is not  
14        attached to a District Attorney's Office.

15                It is not attached to any police department. It's  
16        an independent office. It's under the auspices of the New  
17        York University. It's a learning and autopsy center.  
18        There are conferences and lectures and the art and science  
19        of pathology of forensic pathology, anatomical pathology is  
20        taught there and some of the greatest pathologists in the  
21        world, Dr. Milton Hepburn, Dr. Michael Rodden have served  
22        as Chief Medical Examiners. Those are men in the medical  
23        field who are beyond contest, beyond the challenge.

24                She tells you that only one wound was fatal, the  
25        rest were not fatal. Of course one wound was fatal. It

## Summations - Defense

1       severed the artery and severed the carotid and aorta. It's  
2       a small wound on the outside, but it punctured there, and  
3       she has the audacity to tell you that no other instrument  
4       in the world other than a knife could have caused those  
5       five puncture marks.

6                You mean a stiletto couldn't have done that? You  
7       mean a razor, a barber's razor couldn't have done that?  
8       Finally I get her to grudgingly, grudgingly admit that a  
9       dagger might be able to do it.

10               Look, the People have to prove to you that my  
11       client had the intent and I have to prove this, beyond or  
12       as this male prosecutor has said, beyond any reasonable  
13       doubt that's what he promised you in the opening, they have  
14       to prove that given everything that you heard, everything,  
15       that my client entertained the intent to cause the death of  
16       Sosa. That's to make out murder in the second degree.

17               If they fail to do that, well, they charge another  
18       crime. Manslaughter in the first where they have to prove,  
19       beyond any reasonable doubt according to the People's  
20       opening, that my client inflicted those puncture wounds  
21       with an intent to cause serious physical injury and they  
22       have to prove in third count criminal possession a weapon  
23       in the fourth degree that my client possessed a knife with  
24       the intent to use it unlawfully, not to use it defensively,  
25       not to use it by way of self defense or justification, but

## Summations - Defense

1 to use it unlawfully against another.

2 So, you see, I'm going to suggest to you that my  
3 client acted in inflicting and make no doubt about it, he  
4 inflicted the wounds, but that's only the actor, that's the  
5 only act. The act must be accompanied by the mens rea, the  
6 intent.

7 What was his intent at the time that he punctured  
8 the deceased five times? His intent, I suggest to you,  
9 overwhelmingly shows that he was dealing with a loud,  
10 obnoxious, aggressive threatening human being who was a  
11 stranger to him, who was taller than him, bigger than him  
12 and he brought all that emotional luggage by the party.

13 All of that emotional luggage you have to take  
14 that into consideration. A man who is bipolar. A man who  
15 is depressed. A man who tried to kill himself three times.  
16 A man who was sexually abused by his stepfather for three  
17 years. A man mentally institutionalized twice. A man who  
18 was prescribed medication.

19 You know what I find ridiculous? You see how a  
20 prosecutor can play a game well. Mr. Delgado, on  
21 cross-examination, you say you had prescriptions for these  
22 meds. Do you have those prescriptions with you so you  
23 could show them to the jury?

24 When you last went to the drug store and you got a  
25 prescription and you got the medicine, what did you do with

## Summations - Defense

1 the prescription? You handed it to the druggist, did you  
2 not? Of course you did.

3 You handed it into the druggist. They keep it on  
4 file because they have to have a an accounting to the State  
5 of New York especially when we are dealing with controlled  
6 substances. You don't keep the prescription. The druggist  
7 keeps it. It's a lot of money up there. The pharmacist  
8 keeps the prescription. See how unfair a question that is,  
9 where is the prescription, Mr. Delgado.

10 He's not a smart, agile quick Smart Alec. He  
11 doesn't have the mind that can snap to and say well, why,  
12 of course, the druggist has them. I handed in the  
13 prescription to keep them. I get the medicine. I get the  
14 medicine, so David Delgado's state of mind is serious.

15 And then the issue of self-defense arises. You  
16 take Delgado as you find him with his history, with his  
17 background and then and only then you employ the objective  
18 tests, which is, given his background, given his  
19 circumstances, given the interactions at the party, given  
20 what happened to him at the party, did he act reasonable?

21 Reasonably, see, that's the objective portion of  
22 this, but the subjective portion is take a man as you find  
23 him. You got to peer into his mind and you've got to  
24 determine, beyond any reasonable doubt according to the  
25 district attorneys opening what that intent was.



## Summations - Defense

1           And I'm going to tell you something else, there  
2           was an awful lot of drinking going on, an awful lot. I  
3           don't know if any of you have ever consumed six hard liquor  
4           drinks plus, 3, 4, 5 cans of beer. All I could tell you is  
5           that it's a reasonable conclusion that one would be unable  
6           to formulate the intent to kill or to inflict serious  
7           physical injury or to possess a knife with the intent to  
8           use it unlawfully on another if one was so drunk.

9           Six larger than a Dixie cup drinks, the hard  
10          liquor, Vodka, Bacardi, Hennessy, Coors, combined with the  
11          drugs that he takes which forbid alcohol, was he so  
12          inebriated, so devoid of common sense that he was unable to  
13          formulate any intent to kill, to cause serious physical  
14          injury or to use a knife unlawfully against another?  
15          That's an issue. It's an issue. You have to take into  
16          consideration everything.

17          Told you in the beginning that yours is an  
18          onerous task and I wouldn't want to be in your seat this  
19          morning. Like William Butler Yates, my favorite, Yates, it  
20          is common knowledge that the thought of man shall not be  
21          tried for the devil himself knoweth it not the thought of  
22          man. William Butler Yates. One of my favorites.

23          Well, it's been thrust in your lap. See, my  
24          client doesn't count on the Judge. He doesn't count on any  
25          governmental official to determine whether or not the proof

## Summations - Defense

1 spells out guilt beyond any reasonable doubt. He relies  
2 upon the Jeffersonian principle, Thomas Jefferson who  
3 incorporated it into the constitution of this country,  
4 trial by jury.

5 You are his neighbors. You are a cross section of  
6 the Bronx. He relies certainly not upon this Judge. He  
7 relies upon nobody of administrative officials, such as a  
8 committee of judges. He relies on you.

9 And every prosecutor I told you in opening  
10 45 years at the bar as always demanded a guilty verdict. I  
11 will ask you for something is the most rare and ephemeral  
12 of commodities, something that men have been searching for  
13 centuries, I'm ask you for justice. I'm asking you for  
14 justice.

15 David Delgado through me asks you for justice.  
16 Thank you for your attention now and throughout the trial.  
17 Thank you for your putting up with a cell phone that I know  
18 not how to control or operate. You're good people. Do the  
19 right thing.

20 THE COURT: Thank you, Mr. Cantor, for your  
21 closing argument.

22 Mr. District Attorney?

23 MR. ROSENWELD: May we approach?

24 THE COURT: You may.

25 (Whereupon, there is a discussion held off the

**Summations - Defense**

1 record, at the bench, among the Court, Mr. Cantor , and the  
2 Assistant District Attorney.)

3 THE COURT: Madam Forelady and ladies and  
4 gentleman of the jury, we will now take a very short  
5 intermission and anybody who wishes to refresh themselves,  
6 now is the time to go and the officer will bring you back  
7 accordingly.

8 (Jurors leave the courtroom.)

9 (A recess is taken.)

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1 MR. CANTOR: You intend to let them have lunch at  
2 1 o'clock, do you not?

3 THE COURT: No, I do not.

4 MR. ROSENFELD: Okay, your Honor.

5 THE COURT: All right. Bring back the jury.

6 MR. ROSENFELD: Judge, I ask Mr. Cantor to move  
7 back.

8 MR. CANTOR: No, Judge. You've given me  
9 permission.

10 THE COURT: I did. Maybe you can just move away  
11 a little back further.

12 MR. CANTOR: Judge --

13 THE COURT: Along the side there.

14 MR. CANTOR: Towards you?

15 THE COURT: He may want to pace.

16 MR. CANTOR: Judge, I'm just following your  
17 directions.

18 THE COURT: No. Move it back next to the side.

19 MR. CANTOR: Back?

20 THE COURT: Why don't you get up, Mr. Cantor,  
21 carry it back and I'll tell you. No. Get up, please.  
22 Just carry it back. I'll tell you where to stop.  
23 Apparently, you cannot follow my directions. Sergeant.  
24 She'll place the chair where I want it, alongside the table  
25 of the People, yes, this way it's free roam space if Mr.

1 District Attorney, Mr. Rosenfeld wishes to utilize that.

2 COURT OFFICER: Jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Ladies and gentlemen, we now pass to  
5 the closing arguments by the People.

6 MR. ROSENFELD: Good morning, ladies and  
7 gentlemen.

8 JURORS: Good morning.

9 MR. ROSENFELD: First of all, I want to thank you  
10 for accepting your responsibility as jurors in this case.  
11 I appreciate your patience, the attention that you've given  
12 to this matter and that I hope you will give to it once you  
13 get into the jury room.

14 When you first walked into this courtroom two  
15 weeks ago, two or three weeks ago, you probably wondered  
16 who committed this crime, what happened? When? Where?  
17 What? Why? How? Well, I think you've seen over the past  
18 two weeks that all your questions have been answered.  
19 There's no mystery here. This case is not about a  
20 justifiable homicide, justified killing. This case is  
21 about the defendant possessing a knife and stabbing George  
22 Talarvera to death.

23 Let's look at the defense claim that the  
24 defendant was justified. There's not one shred of evidence  
25 to support his claim of justification or self-defense. I'm

1 going to ask you to follow the Judge's instructions at the  
2 end of this case. Listen to what the law is. Nothing that  
3 Mr. Cantor says is evidence. Nothing that I say is  
4 evidence. And you can accept any of our comments on the  
5 case or you can reject them or accept parts of them.  
6 That's not evidence.

7 When you look at the justification charge that  
8 the Judge will read to you, he will tell you that the  
9 People are required to prove beyond a reasonable doubt that  
10 the defendant was not justified. And as I go through my  
11 summation, you will see that the defendant was not  
12 justified.

13 And the charges that the defendant or a defendant  
14 may use deadly physical force upon another individual when  
15 and to the extent that he reasonably believes it to be  
16 necessary --

17 MR. CANTOR: Judge --

18 MR. ROSENFELD: -- to defend himself --

19 MR. CANTOR: Judge, that is the law.

20 THE COURT: The Court will give the appropriate  
21 instruction.

22 MR. CANTOR: Will you inhibit him from going any  
23 further along that line?

24 THE COURT: At the appropriate moment, if  
25 necessary, I shall.

1 You may continue.

2 MR. ROSENFELD: The defendant, when he reasonably  
3 believes to be use of deadly physical force.

4 MR. CANTOR: Objection.

5 THE COURT: Overruled.

6 MR. ROSENFELD: When you look at the facts of the  
7 case and apply it to the law which is what I'm asking you  
8 to do and what the Judge will instruct you to do, you will  
9 see that the defendant could not have reasonably believed  
10 that he had to defend himself and use deadly physical force  
11 because the defendant, David Delgado would have to have  
12 believed that Sosa, George Talarvera was using or about to  
13 use deadly physical force against him, and that his own use  
14 of physical force, stabbing Sosa was necessary to defend  
15 himself.

16 Let's look at that first thing. There is no  
17 evidence in this case that Sosa at any time used or  
18 threatened to use deadly physical force against the  
19 defendant. The whole time, every witness, including the  
20 defendant himself, and Margie said Sosa never had a weapon.  
21 They were at a party. Who would bring a knife to a party?  
22 The defendant did. He brought it to use against Sosa. It  
23 had to be a reasonable person in the defendant's position  
24 knowing what the defendant knew and believing the  
25 circumstances, the defendant -- you've heard his testimony,

1 you saw him on the video, you heard the statements he made.  
2 He was not so drunk that he didn't know what was going on.  
3 He said he was a little tipsy and dizzy. That's it. He  
4 knew exactly what he was doing. We'll get into that a  
5 little later. You're going to hear the Judge tell you the  
6 defendant would not be justified in using deadly physical  
7 force if the defendant knew he could with complete safety  
8 to himself --

9 MR. CANTOR: He's instructing the jury on the law  
10 and I object.

11 THE COURT: Overruled.

12 MR. ROSENFELD: He could with complete safety to  
13 himself and others avoid the necessity of using deadly  
14 physical force by retreating.

15 Now, Mr. Cantor just spoke to you for an hour.  
16 He implored you seek justice for his client. Did you ever  
17 hear him mention once about the fact that the defendant  
18 under the circumstances as you've heard it during this  
19 trial could have walked out the door and nothing would have  
20 happened? Because that's what this is about. He could  
21 have retreated safely. Margie, his now common-law wife,  
22 said he could have walked right out the door. The  
23 defendant admitted there was nothing stopping him from  
24 walking out the door. So if someone's approaching you and  
25 you feel threatened with fingers, walk out the door. And



1 if he could have done it, he's not justified. You'll hear  
2 this charge in its entirety from the Court.

3 As I go through the evidence, please see how this  
4 will prove -- I mean the People will have proven that  
5 justification does not exist here. Remember the defendant  
6 said Sosa did not have any weapon and did not threaten him  
7 with any weapon, the finger to the face, the hand to the  
8 shoulder, grabbing the jacket, if you believe it was Sosa  
9 and not Margie who grabbed the defendant. There's no real  
10 threat.

11 Mr. Cantor used the word threat. I'll use the  
12 word statements to the defendant. The deceased kept saying  
13 to the defendant if you disrespect Margie, this is what  
14 will happen. Nobody denied it. You heard it from the  
15 witnesses. They were arguing. Sosa was loud, obnoxious,  
16 drunk, if you disrespect Margie and whatever the words are,  
17 my brothers, my people, I will fuck you up, I will fuck you  
18 up in the future. I asked the defendant did you ever  
19 disrespect Margie at the party? What did he say? No. Was  
20 there any danger of Sosa doing anything to him? No. Why  
21 not? Why not? Because Sosa was just being loud and  
22 obnoxious. He was a little drunk -- a lot drunk. He was  
23 no threat because the defendant was not disrespecting  
24 Margie or hurting her in any way. He was talking about the  
25 future. He was just being a friend and being loud and

1 obnoxious. That's all. The defendant didn't think it was  
2 a real threat. Didn't he tell you it wasn't a concern? It  
3 wasn't a worry. We'll get to that in a moment. There was  
4 no reason for the defendant to use deadly physical force  
5 against Sosa. It was not a hostile environment. It was a  
6 Christmas Eve party. There were children, there were men,  
7 women. Defendant realized Sosa's statements were not real,  
8 just empty words. You've heard that expression.

9 The defendant's statements, his testimony here at  
10 trial, just weak excuses, just throwing them out to you,  
11 hopefully, one of them will grab maybe one or two jurors  
12 and you would accept it, and he gives different versions.  
13 How many different versions did the defendant give to try  
14 to influence you, make you believe he was testifying -- the  
15 defense in his opening said defendant saw the knife on the  
16 table and grabbed it. That's not what happened. There was  
17 no evidence of that. Only one of the defendant's  
18 statements. Only one of Mr. Cantor's statements. This is  
19 not evidence.

20 And one more thing about justification. The  
21 Judge will explain to you that each of the stab wounds,  
22 they're not puncture wounds, Mr. Cantor tries to minimize  
23 each of the wounds. You saw the wounds. Each of those  
24 stabbings has to be justified, not just the first one, but  
25 the second, the third, the fourth and the fifth. So even

1 if you believe the first one was justified, and you're  
2 entitled based upon your discussions to believe, accept  
3 whatever you want of the evidence, you have to look at the  
4 second, then continue with the third, the fourth and the  
5 fifth. So even if you believe the first stabbing is  
6 justified, it doesn't mean all the others were. You must  
7 analyze each one and must determine what happened. And if  
8 Sosa was no longer a threat after one stabbing or two  
9 stabbings, then the third, fourth and fifth were not  
10 justified; however, you want to look at the evidence.  
11 That's your responsibility.

12 And while Mr. Cantor puts pressure on you, I  
13 think his words were onerous job, you have a difficult  
14 task, the weight of his client. Case is fairly  
15 straightforward. You follow the Judge's instructions and  
16 look at the evidence and apply the law. You can reach a  
17 conclusion that's based on justice. The defendant and Mr.  
18 Cantor want you to believe their version of the events.  
19 You ever hear the word hail Mary pass? Football or  
20 basketball. It's a desperate attempt by one team that's  
21 losing to throw the ball down at the end zone hoping the  
22 quarterback throws --

23 MR. CANTOR: Are we trivializing a murder trial  
24 to a football game?

25 THE COURT: Do you have an objection?

1 MR. CANTOR: I do.

2 THE COURT: Overruled.

3 MR. CANTOR: Exception.

4 THE COURT: Noted.

5 MR. ROSENFELD: Makes you laugh, doesn't it? I  
6 mean Mr. Cantor's antics in this courtroom are deplorable.

7 MR. CANTOR: I object.

8 THE COURT: Please.

9 MR. CANTOR: I object.

10 THE COURT: Yes, please no personal dispersions.

11 MR. ROSENFELD: The family and friends of Sosa  
12 are not laughing. I am in no way making light of this  
13 serious crime that the defendant committed. Please don't  
14 be distracted by defense attorney's comments and actions.

15 MR. CANTOR: I'm objecting. His adhomnym remarks  
16 are inappropriate.

17 THE COURT: All right. Be cautious.

18 MR. CANTOR: Will you sustain or overrule my  
19 objection?

20 THE COURT: I'll sustain it.

21 MR. CANTOR: Will you instruct the jury to  
22 disregard?

23 THE COURT: The jury already knows any personal  
24 comments about opposing attorney is not evidence of  
25 anything at all. Just disregard it.

tr/d Summation - People

1 MR. ROSENFELD: I was discussing the defense's  
2 attempts at the hail Mary pass hoping that someone would  
3 grab onto it and score points at the last second. That's  
4 what the defendant's statements are at this trial.  
5 Convenient truths that he wants you to believe when this  
6 benefits him. But it's clear that it was just a recent  
7 fabrication to influence you.

8 Then he claims confusion. He sat here in court  
9 after 30 months, said for the first time to anybody that  
10 Sosa punched him in the head and neck and that's what  
11 precipitated the action. That's to support his  
12 justification of why he felt threatened. Never mentioned  
13 it before. Why? Because the jury's here now, he wants to  
14 influence you. He wants you to believe that. But I submit  
15 to you there's no basis and credibility or evidence that  
16 that happened.

17 Let's look at all the steps and everything that  
18 led up to the stabbing of Sosa. Defendant's version and  
19 witness' versions are pretty similar in many parts. Sosa  
20 did approach the defendant two times, and then the final  
21 time they did have words, and I don't have to repeat it,  
22 you heard all the words, they weren't nice words, but they  
23 were words nevertheless.

24 Defendant said he left the apartment and  
25 returned. He says he took a knife from Margie's kitchen.

tr/d Summation - People

1 She said he never went in the kitchen. He went to the  
2 bathroom and they left. Having heard that, he now at trial  
3 says to you well, she was actually walking out the door and  
4 I went into the kitchen, grabbed the knife and left. Never  
5 any testimony from Margie about that. He said he put it in  
6 his pocket. Why did he put a knife in his pocket unless he  
7 intended to use it. We'll get back to that in a moment.

8 Defendant returned to the party. He wasn't  
9 concerned about Sosa. Two times Mr. Cantor makes into  
10 these awful threats two times, threats to the defendant.  
11 Yet he left and returned to the party. This time he had a  
12 knife with him. Why? Because he intended to use that  
13 knife against Sosa. We heard that Sosa approached the  
14 defendant. Witnesses told you what happened. Defendant  
15 took the knife out of his pocket and stabbed Sosa five  
16 times in the nose, the ear, neck and back of the head.  
17 There was no punching by Sosa.

18 Immediately after he stabbed Sosa, defendant ran  
19 off. He didn't even stop. He didn't try to see how  
20 severely injured Sosa was or try to get help. He just left  
21 him there to die. He had blood on his hands. He knew it.  
22 Did he call 911, call for help? React how sorry I am.  
23 Margie came out after him. He took off to save himself.  
24 That's his only priority at the moment he stabbed Sosa to  
25 now his only priority was to save himself. He wasn't under

1 arrest. He got away. He took a cab to Brooklyn. He  
2 thought he could get away with it. It was only when he was  
3 caught, brought to court does he inject the justification  
4 charge. He says Sosa grabbed my arm.

5 Remember the statement to Detective Banker. We  
6 heard from Margie that she's the one who grabbed his arm.  
7 He's not confused. He's just making up different stories.  
8 When the defendant was caught, he didn't know what evidence  
9 was against him or what people saw, what they were saying.  
10 He tells Detective Banker what happens. He gives two  
11 spontaneous statements in the car. The first one he says  
12 to Detective Banker --

13 (Whereupon, a document is being displayed in open  
14 court.)

15 MR. ROSENFELD: -- at 12:40 when he's arrested,  
16 yo, that guy kept fucking with me all night. He was drunk.  
17 They took him outside, and when they came back he grabbed  
18 my arm. What does he say here? I saw a knife on the table  
19 and grabbed it and swung at him. People in the party  
20 grabbed me, then I ran. There's his first story trying to  
21 give some defense, Sosa grabbed his arm. Never happened.

22 Margie says she grabbed his arm. There was no  
23 knife on the table. None of the witnesses saw a knife on  
24 the table. He didn't grab a knife suddenly. He had it  
25 with him with the intent to use. He's already trying to

1 give up trying to prevent anyone from believing that he  
2 just murdered Sosa. He comes up with a defense. Now, what  
3 does he say to the detective a few minutes later? I fucked  
4 up again. So he realized that's what he did.

5 The defendant was taken back to the precinct.  
6 Detective Banker, you had an opportunity to look at this  
7 detective on the witness stand, he's a professional, yes,  
8 he's retired. What three quarters has to do with anything  
9 or Mr. Cantor's attempts to influence you by talking about  
10 things totally irrelevant to trial and aren't true I don't  
11 know, but again, it's just an attempt --

12 MR. CANTOR: He can't vouch for the credibility  
13 of witnesses and I'm objecting.

14 THE COURT: It's only argument.

15 MR. CANTOR: Of course, but he cannot vouch for  
16 the credibility of witnesses.

17 THE COURT: The jury will make its own  
18 determination --

19 MR. CANTOR: Appellate courts --

20 THE COURT: -- as to credibility.

21 MR. CANTOR: I'm sorry?

22 THE COURT: Your objection is overruled.

23 MR. CANTOR: My exception is noted.

24 THE COURT: Noted.

25 MR. ROSENFELD: As I said, you had an opportunity



1 to look at the detective and judge his credibility.  
2 Credibility is what happened when he was a detective, what  
3 he saw and heard, and he followed police procedures. He  
4 read the Miranda warnings to the defendant. The defendant  
5 admitted to you, also in the video he wrote it, he wrote it  
6 out, no one forced him. It was voluntary. He waived his  
7 rights. Detectives treated him decently. They gave him  
8 food, they took him to the bathroom. You saw in the video.  
9 Did he look like someone who was being pressured? He  
10 freely and voluntarily gave a statement. Said the  
11 detective helped him with spelling, whether that is true or  
12 not we don't know. We know that he was the one who made  
13 the cross-outs, but he wrote out those two pages.

14 Remember during the cross exam, Detective Banker,  
15 defense attorney asked him why not three pages, one page?  
16 Why two pages? What's the difference? Come on. That's  
17 how much it took for him to write out the statement.

18 Let's look at that statement, the second  
19 statement from the defendant. First we have the Miranda  
20 warnings. The defendant tried again swaying you by making  
21 it seem like a statement was involuntary because he said  
22 that first he wrote the statement, then the Miranda  
23 warnings. Detective Banker, an experienced detective,  
24 having taken many, many statements, many, many Miranda  
25 warnings, knows how to do this. He did it properly. He

1 said he wrote on the top the date, the time, 2:55 in the  
2 afternoon, he wrote his name there, he read the Miranda  
3 warnings, David Delgado signed appropriately. They all  
4 signed it at the bottom, then he gave him the paper. If  
5 you look at the time, 15:05, that's 3:05, so about ten  
6 minutes that he started writing out the statement.

7 Let's look at that statement again. Even he says  
8 here telling me that I was going to have problems with him.  
9 I got nervous. He was disrespecting everyone at the party.  
10 He came back at me again. I got feared at him because he  
11 was bigger than me. I was scared at that point that he was  
12 going to attack me so I took a knife from the kitchen  
13 'cause I was already scared at him. Well, he's leaving out  
14 some parts here. I was about to leave the party. He came  
15 at me and again told me to remember that if I fuck around  
16 with Margie that I was going to get hurt by him. So when I  
17 went to walk away Sosa grabbed me and that's when I took  
18 the knife out of my pocket and hit him. I was already  
19 scared and nervous for my safety. He says he's not the  
20 person to do this. He's sorry for what he did, was scared  
21 for his life. He left the party. He ran out of the  
22 apartment, took a cab. I don't remember where is the  
23 knife. That's his written statement.

24 Then he gives a video statement to Assistant  
25 District DA Erica Weissberg, again, Miranda warnings, and

tr/d Summation - People

1 you had an opportunity to look at him on that video. You  
2 can see his demeanor. He is asked questions. He answered  
3 the questions. No one forced him. Defense attorney has  
4 said over and over from the beginning of this case that  
5 defendant had a feeble, a weak mind and could be  
6 manipulated. Is there any evidence of that here? Just a  
7 normal person. Yeah, we all have our difficulties. We all  
8 have our challenges, but to say a feeble and weak mind is  
9 again trying to influence you, using his words, because  
10 there's no evidence of that. There's no psychiatric  
11 psychological evidence, no medical testimony. Nothing.  
12 Just the defense attorney throwing out those words, they're  
13 meaningless, they are not evidence, trying to influence you  
14 and think that maybe the detective affected him or had  
15 something to do with this statement.

16 But let's remember each of the statements.  
17 Defendant admitted he's the one who stabbed Sosa. There's  
18 no question here. There were lineups, the witnesses who  
19 testified made the identifications, identified the  
20 defendant. No doubt in their mind. And they were correct.  
21 Other witnesses saw the lineup. There's nothing here to  
22 infer any negativity. Those witnesses didn't testify so  
23 you can't get more into the lineups, the fact that defense  
24 attorney mentioned other witnesses like something sinister,  
25 like we're hiding something. No evidence of that.

1           It's not the number, the quantity of the  
2 witnesses who testify here. It's the quality of their  
3 testimony. You have four or five, six people all saying  
4 the same thing. You say it's just repetitive cumulative.  
5 We had four witnesses. They all told you what they saw at  
6 the party. Were there other people? Yes. Did other  
7 people see the lineup? Yes. But there's nothing negative  
8 to infer about it, but they didn't come here to testify.

9           Let's look at the defendant's statement and the  
10 video. After the first incident when the deceased  
11 approached him, he said to the defendant I'm a man, I get  
12 your point. Okay. That was it. Then he said Sosa left  
13 the kitchen, went back to dancing. Nothing more  
14 transpired. He talks about the second time, again,  
15 deceased came over to him again with the fingers to the  
16 shoulder. Nothing happened. Again, statements made that  
17 if in the future you disrespect Margie.

18           He then leaves with Margie, goes to her  
19 apartment. He gets a knife from the kitchen, a small steak  
20 knife in Margie's kitchen. He said he was worried. Okay.  
21 So he's back at Margie's house. He's no longer at the  
22 party. Sosa is not there. If you're really threatened as  
23 Mr. Cantor wants you to believe the defendant was, and had  
24 such a weak, feeble mind and easily frightened and all  
25 those other things, once you left the party, what do you

1 do? You don't go back to the party. If you really are  
2 threatened you stay home, say I'm not going back. You  
3 don't take a knife, you don't do it, it's over with, you  
4 don't go back to that party, I'm threatened.

5 But the truth is, ladies and gentlemen, I submit  
6 to you the defendant was not feeling threatened. At some  
7 point, he said he came back to the party. He said he  
8 wasn't concerned. He said he was nervous when he went  
9 back. I didn't worry that much. Those are his words.  
10 What is that telling you that these were not real threats  
11 by Sosa? But again, the defendant comes back with a knife  
12 on his person. He had the knife on him because he figured  
13 he would use it against Sosa if Sosa was gonna display a  
14 weapon and really carry a threat, but that was not gonna  
15 happen, ladies and gentlemen.

16 And then when he goes to discuss the incident  
17 himself, he said he blacked out. I don't know how many  
18 times he cuts the victim or Sosa. He reacted, responded,  
19 just swung and hit him in the neck and swung again. He  
20 swung five times. And you saw his motion on the video, how  
21 he went at Sosa. He knew exactly what he was doing and he  
22 was aiming for Sosa's face and neck and head. You saw the  
23 injuries, the nose cut open, the ear completely cut  
24 through, the stab wound on the right side of the neck, the  
25 stab wound to the back of the head, Sosa wasn't even facing

1 him, and the stab wound to the jugular, the carotid that  
2 killed him. It was not justified.

3 He said in the video that Sosa never showed him  
4 any weapon. Sosa put the hand in his face. That's it.  
5 All he was trying to do was relieve his guilt. He admits  
6 his presence at the scene. He admits stabbing Sosa, admits  
7 possessing the knife and using the knife. There's  
8 overwhelming evidence of the defendant's guilt. Everything  
9 you need to convict David Delgado. You have the transcript  
10 of the case. If there's anything you need, the witness'  
11 testimony, you can ask for it. I'm sure you probably  
12 remember it. It's been a week. I'm sure it's embedded in  
13 your mind, but you can review it if there's a discrepancy.  
14 But I submit to you that most of the testimony supports the  
15 evidence that the defendant stabbed and killed Sosa. Did  
16 he do it? Yes, beyond a reasonable doubt.

17 Let's look at the witnesses. Let's look at the  
18 witnesses you heard at trial. You had an opportunity to  
19 learn a little bit about the background, the expert  
20 witnesses, their skills, their experiences, their  
21 expertise, their professionalism, their certifications,  
22 training, schooling. You heard about police officers,  
23 detectives and medical examiners, how medical examiners got  
24 involved in the case, what part they played. Again, it's  
25 for you to judge credibility of these witnesses. Did any

tr/d Summation - People

1 of them have a motive to lie? Something you have to  
2 consider. Yes or no. Did the police officers have  
3 anything to gain, any motive of Detective Florio, Detective  
4 Banker, civilian witnesses, anything to gain by coming in  
5 here testifying? I submit to you nothing.

6 In fact, Alberto Vasquez was so upset by the  
7 questioning, his statement, I believe he said something how  
8 is this relevant to what happened at this incident? That's  
9 right. How is the questioning by Mr. Cantor of his  
10 background in Mr. Vasquez relevant to what happened. He  
11 came in here to tell you about what he saw back on December  
12 25, 2009, the murder of Sosa. This man is only sitting  
13 here under pressure being questioned about events that took  
14 place, let's be frank, 14 years ago.

15 MR. CANTOR: Objection, Judge. There's a valid  
16 legal reason. You know it and he knows it. I'll object.

17 THE COURT: The jury will evaluate the  
18 credibility as it's entitled to. Objection sustained.

19 MR. ROSENFELD: What each of those witnesses is  
20 doing is their respective jobs. Police officers,  
21 detectives come in here as witnesses to a crime to tell you  
22 what happened. Mr. Cantor made issue about Alberto  
23 Vasquez's criminal background and each of the witness'  
24 background and reason they came here to testify.

25 Remember, ladies and gentlemen, you have to apply

1 that same thing to the defendant. Look at his background.  
2 Does he have anything to gain or lose? The same evaluation  
3 that you're asked to give to the civilians, you have to  
4 give to the defendant, too. You promised you would treat  
5 him the same way.

6 Let's look at Sosa. Sosa that night, he was  
7 drunk, he was upset about his wife. He was loud. He was  
8 obnoxious. Everybody says that. But he was no real  
9 threat. There was no reaction from anybody else. Carmen's  
10 daughter got upset. He took him out of the apartment. Mr.  
11 Vasquez, Ms. Dempsey, they took him to their apartment.  
12 But each time he approached the defendant, it was if you  
13 disrespect Margie this will happen to you, again, in the  
14 future. Nothing was gonna happen at that party. Each time  
15 the defendant stayed there. He didn't leave the party.  
16 And I submit to you he didn't think they were real threats.  
17 Yes, Sosa was obnoxious, drunk and he came up to the  
18 defendant three times. Again, remember, he never had a  
19 weapon on him, was no real threat that justified the use of  
20 deadly physical force.

21 Melissa Dempsey came in here. She told you what  
22 she saw at the party. She told you about the time Sosa  
23 approached the defendant. She said I thought he was  
24 arguing. That's the testimony from the transcript, I  
25 thought he was arguing. She was asked later by Mr. Cantor



1 if she doesn't remember saying arguing. She was brought  
2 back here. He read from it. I thought he was arguing and  
3 she said I couldn't hear their words. Okay. Accept what  
4 you want of that. She couldn't hear what Sosa and David  
5 Delgado were saying. The music was loud. But she told you  
6 what she saw.

7 Alberto Vasquez, same thing, came in here, told  
8 you he was in the kitchen with David Delgado. At one point  
9 while he was in the kitchen saw David Delgado with a knife.  
10 He showed it to him. Why did he show it to him? To show  
11 he had the knife on him, that he was secure.

12 Mercedes Rodriguez, again, came in here, told you  
13 what she saw. She was sitting right there when the  
14 defendant ran out. She tried to grab him to keep him from  
15 fleeing. What does he do? He pushed her away. As she  
16 fell, she saw the defendant with the knife in his hand.  
17 She didn't run after she was down to the floor from the  
18 hallway. She told you her position. She saw the brown  
19 handle with the knife and the knife sticking out of the  
20 bottom, still holding it in his hand when he fled the  
21 scene. That's why the knife was never recovered, because  
22 the defendant got rid of it. In fact the police looked for  
23 the knife. They looked in the apartment, the stairwell,  
24 whatever, they didn't find it because the defendant got rid  
25 of it. But he had it with him when he left.

1           Finally, you heard from Carmen Matos, Margie,  
2           defendant's common-law wife, again, she was very similar to  
3           the other witnesses, told you what happened, what she saw,  
4           where they went, what they did that day, very  
5           straight-forward and clear. Nothing to gain or lose for  
6           any of those witnesses.

7           Let's look at the defendant's testimony. He's  
8           the most interested witness of all, the most to gain or  
9           lose by testifying. The only person he's interested in is  
10          himself. You observed him on the witness stand. He  
11          changed his story right in front of you, said one thing on  
12          direct, one thing on cross, right here in the courtroom.  
13          Which version of his story do you accept or reject, all of  
14          it, part of it, some of it? Look at the inconsistencies  
15          like Mr. Cantor wants you to do with the other witnesses.  
16          Look at the defendant's inconsistencies. He was aware of  
17          his actions, he was not drunk, intoxicated while on  
18          medication, which was the defense's opening.

19          In fact, Mr. Cantor in his opening said, Page  
20          700, about the medication, it even says so on the vial not  
21          to be taken with liquor. Did you see any proof of any  
22          medication or vials to back that up at trial? But he said  
23          it. You can ignore statements made by myself or Mr.  
24          Cantor. They have to be evidence. And if it's not  
25          evidence, you have to ignore it. There's nothing in this

1 trial about vials saying anything on them. It's just Mr.  
2 Cantor testifying.

3 MR. CANTOR: I object. My client so testified.  
4 That's evidence for the jury to assess. And these  
5 misrepresentations are vile, your Honor.

6 THE COURT: Your objection is overruled.

7 MR. CANTOR: My exception is kindly noted.

8 MR. ROSENFELD: Again, I hope you'll ignore these  
9 outbursts.

10 MR. CANTOR: You see how many attacks. I defend  
11 a man --

12 THE COURT: Please.

13 MR. CANTOR: It's an objection.

14 THE COURT: Please. Yes, that objection is  
15 sustained.

16 MR. CANTOR: Will you so instruct the assistant  
17 district attorney?

18 THE COURT: You just have to say it. Please sit  
19 down.

20 MR. CANTOR: I'm trying to, Judge.

21 THE COURT: All right.

22 MR. ROSENFELD: Defendant knew what he was doing.  
23 He stabbed Sosa, fled the scene, disposed of the weapon.  
24 He fled back to Brooklyn to hide out. He knew Sosa was  
25 dead and that he killed him. He had no intention to turn

1           himself in. I ask you to treat the defendant like the  
2           other witnesses.

3                       We'll talk about what he said about his  
4           background. Told you he was convicted of a felony. I  
5           submit to you that part of the story is meant to manipulate  
6           you into thinking he could not develop an intent to kill  
7           Sosa.

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9                       (Continued on next page.)

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PEOPLE'S SUMMATION

1888

1 MR. ROSENFELD: Even throwing in, as Mr. Cantor  
2 did, six children wants your sympathy. That's to play to  
3 your emotion. He wasn't even living with six children in  
4 Brooklyn. He was living in Brooklyn for a year by himself.  
5 I don't know where the six children come in except to put  
6 that in your minds to give you some sympathy.

7 Look at the charges -- I'm sorry, motive. People  
8 do not have to prove any motive, no premeditation, it's not  
9 a word that's noted here or used here. People do not have  
10 to prove what was in the defendant's mind at any moment  
11 prior to the moment he actually stabbed Sosa --

12 MR. CANTOR: Objection.

13 MR. ROSENFELD: -- with a knife.

14 THE COURT: The Court will give the appropriate  
15 instruction.

16 MR. CANTOR: They must consider that.

17 MR. ROSENFELD: You consider it if it exists. We  
18 heard the defendant took the knife when he returned to the  
19 party. He was intending to use that knife, but the intent  
20 could be formed at the moment the defendant stabbed Sosa.  
21 Doesn't have to exist in his mind for two minutes, three  
22 minutes, four minutes or one minute. At the moment he  
23 pulled out the knife and stabbed Sosa, if you believe he  
24 intended to kill him at that moment then he is guilty of  
25 murder in the second degree. Consider again the defendant

E-1jb

## PEOPLE'S SUMMATION

1889

1 had that knife on him, pulled it out and stabbed the  
2 deceased's head and neck. He intend -- the intent is  
3 demonstrated by the defendant's action. Look at everything  
4 he did. Look at all the evidence and the results were the  
5 natural consequence of his action. Sosa was murdered.

6 You heard the medical examiner's testimony that  
7 the deceased had stab wounds. Mr. Cantor uses the word  
8 puncture wounds, the medical examiner never used the word  
9 puncture, she said stab wounds, not small puncture wounds.

10 The defendant wants you to believe that he was so  
11 frightened, so scared, such a feeble mind, so weak that he  
12 reasonably believed Sosa was going to hurt him. Well, lets  
13 look at the different things that have been put before you.  
14 The defendant said he attempted suicide three times. We  
15 only have defendant's say so, not one bit of proof those  
16 episodes ever happened, he just said it here. The  
17 defendant's opening was that defendant was confined to  
18 mental institution two times. You heard any evidence about  
19 mental institutions, any doctors records, anything to prove  
20 the defendant was ever confined to mental institutions two  
21 times? Answer, no. Mr. Cantor says the defendant was  
22 depressed, bipolar. well, he is not a medical expert and  
23 there has been no evidence whatsoever. In fact, the  
24 defendant said he would produce evidence that the defendant  
25 was mentally infirmed. Did you see any evidence produced

E-1jb

PEOPLE'S SUMMATION

1890

1 here, any medical experts, psychiatrist, psychologist,  
2 someone who came in here to talk about a diagnosis of  
3 defendant's condition? Anybody? I think the answer is no.  
4 Any of you want to believe that the defendant was depressed  
5 that doesn't stop him from forming the intent to kill Sosa  
6 at the time he stabbed him.

7 Defendant said he was sexually abused when he was  
8 younger, eight or nine, and he cried on the witness stand.  
9 Is there any proof of that, any records, anything at all,  
10 any medical expert to testify that that had any effect on  
11 the defendant or his weak mind, creating a feeble mind,  
12 made him susceptible, any evidence at all? If you have in  
13 the jury room bring it out, but you can go through the  
14 whole record that you have before you, you will see no  
15 evidence to prove that the defendant committed suicide,  
16 that he was confined to mental --

17 MR. CANTOR: Well, if he committed suicide,  
18 Judge --

19 MR. ROSENFELD: Attempted suicide.

20 MR. CANTOR: That really defines --

21 THE COURT: All right. Please, do you have an  
22 objection?

23 MR. CANTOR: Yes.

24 THE COURT: All right. Your objection is noted.  
25 Overruled.

E-1jb

PEOPLE'S SUMMATION

1891

1 MR. CANTOR: Okay.

2 MR. ROSENFELD: Attempted suicide. No evidence  
3 he was depressed or bipolar.

4 MR. CANTOR: Judge, I am going to object, there  
5 is no evidence in this case from all of that? From my  
6 client's testimony --

7 THE COURT: The jury is required to review all of  
8 the evidence.

9 MR. CANTOR: And they can credit such testimony  
10 and that constitutes evidence.

11 MR. ROSENFELD: Your Honor, objection to this  
12 colloquy.

13 THE COURT: And discredit as the case may be.

14 MR. CANTOR: Yes, they can credit.

15 MR. ROSENFELD: Objection.

16 THE COURT: Thank you, Mr. Cantor.

17 MR. CANTOR: So I object --

18 THE COURT: Your objection is noted.

19 MR. CANTOR: -- saying there is no evidence.  
20 Will you rule on it?

21 THE COURT: Overruled.

22 MR. CANTOR: Exception.

23 THE COURT: Please continue, Mr. District  
24 Attorney.

25 MR. ROSENFELD: Defendant and defense attorney

E-1jb



PEOPLE'S SUMMATION

1892

1 said that he took medication and alcohol. well, other than  
2 the defendant saying he took a pill that day and he was  
3 taking medicine three or four months, did you see any proof  
4 that the defendant was on any type of medication other than  
5 what he told you? Any proof about any interaction of that  
6 medication with the alcohol that it would affect any proof  
7 at all? Go through the whole transcript. Have the whole  
8 trial read back again. A statement that the defendant  
9 throws out -- the defense attorney throws out to try to  
10 negate intent on his part, but there is no proof of that.

11 MR. CANTOR: I object. My client's testimony --

12 MR. ROSENFELD: I said that, Judge.

13 THE COURT: It is for the jury to determine.

14 MR. CANTOR: Yes, they can credit it or discredit  
15 as you said. I object.

16 THE COURT: All right. Your objection is noted.

17 MR. CANTOR: will you rule on it?

18 THE COURT: Overruled.

19 MR. CANTOR: Exception.

20 THE COURT: Please continue, Mr. District  
21 Attorney.

22 MR. ROSENFELD: The defense used the words  
23 defendant had a delicate, fragile, weak mind, emotionally  
24 suffered, easily frightened. well, says who? The  
25 defendant, the defense attorney, he is not an expert. He

## PEOPLE'S SUMMATION

1893

1 can't testify about that and we looked at Mr. Delgado's  
2 statement. He went about his daily activities: He worked,  
3 he dated, he traveled, had a job, he shopped, he bought  
4 gifts, where do you see a delicate, fragile, weak mind?  
5 There has been no medical, psychiatric, psychological  
6 testimony at all to back that up other than the defendant's  
7 say so on the witness stand. Mr. Cantor said that the  
8 defendant thought trouble was brewing, bipolarity took  
9 over. Any evidence of that? Give me a little bit to  
10 challenge, give me something, there is none. Let's be  
11 honest, there is no evidence of all these things other than  
12 defendant's testimony.

13 Defense wants you to believe that he had no  
14 intent to kill Sosa because he did, did not aim for the  
15 heart or any vital organs, he swung wildly. Wait a minute,  
16 he struck at the deceased. He went right for the head, the  
17 ear, the neck, the back of the head what is that intent to  
18 do? Remember the defendant left the party and could have  
19 stayed back in Margie's apartment if he really thought he  
20 was threaten or that any violence was going to be done to  
21 him, but he said he didn't worry that much. At one point,  
22 maybe it was at the beginning, the defendant was on the  
23 precipice of -- because of what his is stepfather did to  
24 him. There is nothing to make that connection here at  
25 trial other than the defendant crying on the witness stand

E-ljb

PEOPLE'S SUMMATION

1894

1 and maybe wishful thinking on his part that you would  
2 consider it and have some emotion or sympathy for him.  
3 Well, there is no proof of any of that and he is talking  
4 about something that happened --

5 MR. CANTOR: I am going to object. My client so  
6 testified, that is proof for the jury to credit or  
7 discredit.

8 THE COURT: It is for the jury to determine.

9 MR. CANTOR: Absolutely.

10 THE COURT: All right.

11 MR. CANTOR: So there is proof if they credit it.

12 THE COURT: If they wish to, yes, of course.

13 MR. CANTOR: Obviously, so I object to that.

14 THE COURT: All right. Your objection is noted.

15 MR. CANTOR: Will you rule on it?

16 THE COURT: I am reserving.

17 MR. CANTOR: You're reserving until when, he is  
18 now on summation.

19 MR. ROSENFELD: Your Honor, this constant  
20 interruption how can I continue?

21 THE COURT: I understand.

22 MR. ROSENFELD: Thank you.

23 MR. CANTOR: Will you rule?

24 MR. ROSENFELD: Will you ask him to be quiet and  
25 sit down?

PEOPLE'S SUMMATION

1895

1 THE COURT: Yes, I will.

2 MR. CANTOR: I will be. Will you rule?

3 THE COURT: Overruled.

4 MR. CANTOR: Exception, respectfully, your Honor.

5 MR. ROSENFELD: Mr. Cantor just said all you have  
6 is the defendant's testimony on the witness stand that  
7 these things happened. Nothing else to support any  
8 contention of mental retardation, mental infirmity,  
9 depression, bipolarity, liquor mixing with medications,  
10 sexual abuse, just throwing it out there for you, ladies  
11 and gentlemen. So that the defendant -- defense attorney  
12 can say he has a weak, delicate, impressionable, fragile,  
13 feeble mind, there has been nothing to show that at all.  
14 At one point in a statement in the trial the defendant  
15 comes up with Sosa punching him. We went through that  
16 before, remember that? Before that he said that Sosa  
17 grabbed his arm, but lets look at Carmen's Matos'  
18 testimony, his common-law wife. Question, answer, you told  
19 us, page 1345:

20 "And you told us right before lunch what Sosa  
21 said to him?

22 "ANSWER: Yes.

23 "QUESTION: And then hit him on the area of the  
24 shoulder, whatever you showed us before, right?

25 "ANSWER: Yes.

E-ljb

PEOPLE'S SUMMATION

1896

1 "QUESTION: Then you said you grabbed David  
2 right?

3 "ANSWER: No.

4 "QUESTION: You didn't tell us before lunch that  
5 at that point you grabbed David?

6 "ANSWER: Yes, I grabbed -- yes, I grabbed David  
7 (indicating.)"

8 she said, "I went like this to him (indicating)."

9 "Indicating the witness has with her right hand  
10 grabbed her left wrist and pulled her left wrist across and  
11 turned her body to the right."

12 Was that correct?

13 So indicated.

14 Is that what you did? Question and --

15 "ANSWER: I just grabbed his wrist and pulled him  
16 (indicating.)"

17 And what did the defendant do? He pulled away.  
18 So you had his common-law wife, Margie Matos, testifying to  
19 it. However, the defendant first he says Sosa grabbed him  
20 then he says Sosa punched him. And when it came time for  
21 the actual incident and I had mentioned this before on  
22 justification is that you will hear in the charge of  
23 justification that it's not justification if he could have  
24 freely left the area. And I want to use the proper  
25 words --

E-ljb

PEOPLE'S SUMMATION

1897

1 MR. CANTOR: The proper words are --

2 MR. ROSENFELD: If he knew --

3 MR. CANTOR: Objection.

4 MR. ROSENFELD: Safety.

5 MR. CANTOR: Giving the jury the law.

6 THE COURT: The objection is overruled in this  
7 instance.

8 MR. ROSENFELD: If he could with complete safety  
9 to himself and others avoid the necessity of using deadly  
10 physical force by retreating. Questions to Carmen Matos,  
11 beginning page 1348:

12 "QUESTION: Thank you. And you indicated you  
13 turned to talk to Mercedes Rodriguez?

14 "ANSWER: Yes.

15 "QUESTION: And that you said she was sitting  
16 here indicating on a photograph by the door.

17 "ANSWER: Yes."

18 Page 1349:

19 "QUESTION: And the door was open?

20 "ANSWER: Yes.

21 "QUESTION: If you had wanted to at that point  
22 could you have walked out the door?

23 "ANSWER: Yes."

24 And talking in -- about where David, the  
25 defendant, was he was standing right next to her. There

## PEOPLE'S SUMMATION

1898

1 was nothing to prevent the defendant from walking out in  
2 complete safety and retreating.

3 Now, ladies and gentlemen, when you look at the  
4 charges it's clear reasonable people can differ and have  
5 different views of the evidence. All 12 of you, as the  
6 judge will tell you must agree and the choices you make  
7 should be based upon a reasonable view of the evidence and  
8 proof beyond a reasonable doubt that the defendant  
9 committed the crimes and you will hear the elements of the  
10 crimes, the judge will explain them to you and you can  
11 accept all of the testimony of a witness or part of the  
12 testimony.

13 There are two main charges of homicide and a  
14 charge possessing a weapon. In a murder charge there are  
15 two elements and I submit to you that the People have  
16 proved beyond a reasonable doubt each of these two  
17 elements. What's the first one? That the defendant caused  
18 the death of Sosa, George Talavera, by stabbing him. Did  
19 he do that? It's very clear, yes, he did. Two, did the  
20 defendant intend to cause his death? I submit to you that  
21 based upon the evidence and a reasonable view of it --

22 MR. CANTOR: Judge, an attorney is not allowed to  
23 interject his personal opinion.

24 THE COURT: Be guided.

25 MR. CANTOR: That is an objection, Judge, will

E-1jb

PEOPLE'S SUMMATION

1899

1       you rule?

2               THE COURT: Sustained.

3               MR. CANTOR: Will you tell the jury to disregard?

4               THE COURT: The jury will be so guided.

5               MR. ROSENFELD: You can look at the evidence and  
6 judge whether or not the defendant intended to cause the  
7 death of Sosa by looking at how he stabbed Sosa. The knife  
8 stabbing to the neck, face and the back of the head. So  
9 those two elements of murder in the second degree I submit  
10 to you you can find by evaluating the evidence and proof  
11 beyond a reasonable doubt that the defendant murdered Sosa,  
12 but again reasonable people have different views of the  
13 evidence.

14               Manslaughter in the first degree has two  
15 elements, but they're different and the manslaughter  
16 element involves intent to cause serious physical injury.  
17 Well, again, reasonable people, ladies and gentlemen,  
18 looking at the same evidence may feel that Sosa was trying  
19 to seriously injure -- I'm sorry. The defendant was trying  
20 to seriously injure Sosa by stabbing him in the neck, the  
21 face and the back of the head. He could have stabbed him  
22 in another part of the body: An arm, a leg, a hand. You  
23 may say, well, he wasn't trying to kill him, he wasn't  
24 trying to cause serious physical injury, but he stabbed him  
25 through the neck to the jugular vein, the carotid artery.

E-ljb



## PEOPLE'S SUMMATION

1900

1 It's as vital as any other part of the body, whether it's  
2 in the heart or anything else, lungs you can determine that  
3 he intended to kill George Talavera by that or if you  
4 interpret the evidence in favor of defense you can decide  
5 that he by doing those things tried to -- had the intent to  
6 cause physical injury, it's up for you to decide and as for  
7 possession of the weapon it's clear that he took the weapon  
8 from Margie's apartment with the intent to use it against  
9 Sosa if he needed to.

10 You heard, ladies and gentlemen, you can hear all  
11 or partial parts of the testimony, but please, I ask you to  
12 work together to resolve any inconsistencies. I mentioned  
13 to you at the beginning and ask you to resolve any  
14 interioral or minor inconsistencies. Make piles of what  
15 things are important, what things are not important. Look  
16 at the evidence and separate it out. I submit to you you  
17 can easily see that there are parts of the testimony that  
18 is not as important as other parts. Focus on the main  
19 points. Avoid distractions that have taken place at trial  
20 and use your common sense to evaluate the witnesses.

21 It's easy to sit here in this courtroom, 30  
22 months after the murder and judge these witnesses. What  
23 could they have done? What could they have said? What did  
24 they say inconsistent with what they remember today? What  
25 they don't remember today? Did they get angry on the

E-ljb

PEOPLE'S SUMMATION

1901

1 witness stand? Were they cooperative, uncooperative?  
2 What's hard is for a person to get on the witness stand and  
3 I hope you consider that, and I hope you give them the same  
4 consideration you would want if you were on that witness  
5 stand and you had to testify about an event 30 months ago  
6 and you came in here just to let everybody know what  
7 happened and suddenly you are talking about your past and  
8 you feel attacked like Mr. Vasquez was. It was unfortunate  
9 but you know what --

10 MR. CANTOR: Objection.

11 MR. ROSENFELD: -- the man --

12 MR. CANTOR: That's a legitimate line of inquiry.

13 THE COURT: Certainly.

14 MR. CANTOR: And I am asking your Honor to  
15 instruct the jury to disregard those inappropriate remarks..

16 THE COURT: The injury will be appropriately  
17 instructed.

18 MR. CANTOR: Can you do that presently since they  
19 were presently made?

20 THE COURT: On this particular item you may  
21 disregard it.

22 Move on.

23 MR. ROSENFELD: I believe Mr. Cantor talked about  
24 how Mr. Vasquez got up and was angry and walked out the  
25 witness stand. You all remember Mr. Cantor saying that? I

E-ljb

PEOPLE'S SUMMATION

1902

1 think you can understand how he felt and I ask you to take  
2 that into consideration also. And finally speak up for  
3 Sosa, speak up for the victim, don't let him get lost in  
4 all of this. He is not here to tell his side of the story.

5 MR. CANTOR: That is pandering to the basic  
6 instinct of people, Judge, I object.

7 THE COURT: Overruled. You may continue.

8 MR. ROSENFELD: And I hope you will recognize the  
9 courage of the witnesses to take the witness stand and to  
10 face the defendant and identify him here in court 30 months  
11 after the crime.

12 MR. CANTOR: Objection.

13 THE COURT: It's a factor that can be considered.

14 MR. CANTOR: I'm sorry?

15 THE COURT: It's a factor they may take into  
16 consideration.

17 MR. CANTOR: Courage?

18 THE COURT: Not courage.

19 MR. CANTOR: He called it courage, so that's what  
20 I object to.

21 THE COURT: You will object to his word courage?

22 MR. CANTOR: Yes, Judge. Justice is what I am  
23 after not courage.

24 THE COURT: We're all after justice, Mr. Cantor.

25 MR. CANTOR: I think you are partly right, Judge.

E-1jb

PEOPLE'S SUMMATION

1903

1 THE COURT: I don't know whether to take that as  
2 an expiration to the Court.

3 MR. CANTOR: No.

4 THE COURT: Or an attack to the District  
5 Attorney, but either would be equally distasteful.

6 MR. CANTOR: I raise an objection.

7 THE COURT: You have every right to raise an  
8 objection, limited to objections and not editorializing.

9 Please continue, Mr. District Attorney.

10 MR. ROSENFELD: Remember your promises at the  
11 beginning of this case, if proof beyond a reasonable doubt  
12 exists to the elements of the charges you must convict the  
13 defendant and you said you would do that. That is your  
14 responsibility under the law and to follow the law as the  
15 judge gives it to you even if you disagree with it.

16 Review the charges, review the elements and  
17 prepare the facts. If someone brings up an item that  
18 wasn't in evidence, maybe it was something I mentioned or  
19 Mr. Cantor mentioned or something that someone speculates  
20 about please speak up, step forward and remind that juror  
21 about the judge's instructions and the law. Do a reality  
22 stop check. For instance, you promised at the beginning  
23 you wouldn't consider sentencing, just one of the examples.  
24 There is no question that the defendant was the one who  
25 murdered Sosa based upon all of the evidence you have heard

E-ljb

## PEOPLE'S SUMMATION

1904

1 here at trial. You've heard from the defendant's mouth he  
2 tried to justify his acts, but the People have proven  
3 beyond a reasonable doubt that the defendant was not  
4 justified in stabbing Sosa. He could not have reasonably  
5 believed that Sosa was about to use deadly physical force  
6 against him. Sosa had no weapon and the defendant could  
7 have retrieved it from safety. It won't work here, ladies  
8 and gentlemen.

9 when the case began the Court gave you an  
10 instruction that the defendant is presumed innocent  
11 throughout the entire trial.

12 MR. CANTOR: I'm sorry?

13 MR. ROSENFELD: And it is up to the --

14 MR. CANTOR: I am sorry, the defendant is  
15 presumed?

16 MR. ROSENFELD: Not guilty. Did I say guilty?  
17 If I said it I misspoke, the defendant is presumed guilt --  
18 not guilty, thank you, throughout the entire trial into the  
19 jury room. It is up to the prosecution to strip away the  
20 presumption of innocence. well, here we are at the end of  
21 the case. The presumption of innocence still exists until  
22 the moment you walk into that jury room and start  
23 deliberating and see that People have proved beyond a  
24 reasonable doubt all of the elements and I submit to you,  
25 ladies and gentlemen, you can go into that jury room and

E-ljb

PEOPLE'S SUMMATION

1905

1 confidently conclude that the evidence supports each and  
2 every element of the crimes that will be submitted to you  
3 and that they are proven beyond a reasonable doubt and that  
4 you can conclude that the defendant is guilty and there is  
5 justice, ladies and gentlemen. Mr. Cantor can call it  
6 poetry, he can make inferences about the prosecution's  
7 desires, comments during the trial --

8 MR. CANTOR: Judge, these are honestly attacks.  
9 Again, you have warned him repeatedly, I object.

10 THE COURT: Its argument.

11 MR. ROSENFELD: But I ask you --

12 MR. CANTOR: You overruled my objection?

13 THE COURT: Yes.

14 MR. CANTOR: Note my exception.

15 THE COURT: Noted.

16 MR. ROSENFELD: I ask you to ignore that and  
17 concentrate on the evidence.

18 MR. CANTOR: Judge, I have an obligation to  
19 object.

20 THE COURT: You do.

21 MR. CANTOR: So when he says you are to ignore  
22 that that's contrary to law.

23 THE COURT: Are you making an objection?

24 MR. CANTOR: I am to that comment.

25 THE COURT: Objection is overruled.

PEOPLE'S SUMMATION

1906

1 MR. CANTOR: Once again I except.

2 THE COURT: It's argument.

3 MR. ROSENFELD: I will ask you to ignore that.

4 MR. CANTOR: You see, once again --

5 MR. ROSENFELD: Focus on the evidence.

6 MR. CANTOR: -- he is telling me that I cannot  
7 object.

8 THE COURT: No, he never said that.

9 THE JURY: Sit down.

10 MR. CANTOR: Ignore it.

11 THE COURT: He invited the jury to ignore what  
12 you said. Nothing --

13 MR. CANTOR: You mean I have no right to object?

14 THE COURT: You did object.

15 MR. CANTOR: And the jury should disregard --

16 MR. ROSENFELD: Objection, your Honor, to  
17 colloquy. This is pandering to the jury.

18 THE COURT: There is no need for continued  
19 colloquy, the Court has already ruled and that's it.

20 MR. CANTOR: Do I have a right to object, your  
21 Honor?

22 THE COURT: You do.

23 MR. CANTOR: Fine, that's all I want is the right  
24 and to exercise it.

25 MR. ROSENFELD: Thank you, ladies and gentlemen.

E-ljb

JURY CHARGE

1907

1 THE COURT: Thank you, Mr. Rosenfeld, for your  
2 closing argument.

3 Madam Forelady, ladies and gentlemen of the jury,  
4 we have now reached that point in the trial when you are to  
5 assume the active function for which you have been chosen.  
6 You have heard and seen all of the evidence in this case.  
7 The Court will now charge you and invite you to begin your  
8 deliberations as to the guilt or nonguilt of Mr. Cantor's  
9 client, David Delgado, in this case.

10 The charge will be divided into two parts. The  
11 first part will deal with general principles of law, which  
12 are applicable to this case and all cases that come before  
13 the bench. The second part will be an analysis of this  
14 particular indictment where the Court will briefly explain  
15 to you the application of the law to the facts that you  
16 will determine and you will be required to deliberate and  
17 render your verdict. You know in a criminal trial the  
18 verdict must be unanimous, that is, all 12 must agree as to  
19 the guilt or nonguilt of this gentleman.

20 Its not the Court's intention to marshal evidence  
21 and any reference the Court may make to any evidence  
22 whatsoever in this trial should not be considered by you as  
23 more important than evidence that the Court makes no  
24 reference to. All of the evidence in this case you are  
25 required to review and any reference by the Court as to any

E-1jb



## JURY CHARGE

1908

1 particular evidence or on the other side of the coin  
2 non-reference by the Court as to something you think should  
3 be evidence is not evidence in this case and should not be  
4 considered by you. It is only you, you will remember we  
5 used the expression what is on the table. That is all you  
6 are judging is what is on the table and what is on the  
7 table is the testimony of witnesses and the exhibits that  
8 have been proffered into and received in evidence and the  
9 stipulation between counsel as what they wish you to  
10 consider as evidence. The Court has no power to tell you  
11 what facts are to be more important than other facts. What  
12 witness you think is believable as oppose to less than  
13 believable. Who you think is accurate as oppose to someone  
14 who shouts is not accurate. Who is truthful who is  
15 reliable. These are all questions for you to determine  
16 from the evidence -- totality of the evidence in this case.  
17 Always remember its never the number of witnesses brought  
18 forward by either side, rather it is the totality of the  
19 testimony of witnesses, the quality of what they tell us  
20 regardless of who brought the witness to the witness stand.  
21 Never the quantity.

22 You are not bound to accept the arguments of  
23 either the People or the defense having been just made to  
24 you in their closing argument before you commence your  
25 deliberation. These are, these meaning the evidence and

E-1jb

## JURY CHARGE

1909

1 the judgment of the evidence are all matters now for you in  
2 your exclusive powers as judges of the facts to determine.  
3 Again, you are not bound to accept the argument advanced by  
4 either Mr. Cantor or Mr. Rosenfeld. On the other hand,  
5 however, if you find that the argument advanced by either  
6 counsel is reasonable and logical and based upon the  
7 evidence that you recall that evidence and is consistent  
8 with that evidence you are then perfectly free to adopt  
9 that argument and make it your own.

10 On the other hand, if you find that any argument  
11 or conclusion urged upon you is not based upon the evidence  
12 or is unreasonable or illogical or inconsistent with that  
13 evidence you may disregard that argument in its entirety if  
14 you so choose, but as to the law you already know you must  
15 accept the law and you must apply the law exactly the way  
16 the Court instructs you so that this gentleman,  
17 Mr. Delgado, can be assured of the same application of the  
18 same law that is referable to all of us as citizens.

19 (Continues next page.)  
20  
21  
22  
23  
24  
25

E-1jb

JO-F

**JUDGE'S CHARGE**

1 THE COURT: Under our system of jurisprudence all  
2 cases in court are initiated by way of trial in a charge  
3 that's contained in an indictment. An indictment, you know,  
4 is merely a piece of paper, gets things underway, things  
5 being what the trial is. It's not evidence of anything.  
6 It's not probative of anything. Doesn't mean maybe he did it  
7 or could have done it or must have done it. No. None of  
8 those things.

9 You already know, and you've already pledged early  
10 on when you were first empanelled that you will not hold  
11 against the gentleman the fact that he is here under  
12 indictment. And it is the sworn testimony elicited both on  
13 direct and cross-examination plus that of factual judgment  
14 admitted into by counsel plus the stipulations that you know  
15 was made between and among the counsels that is the only  
16 evidence in this case, the only evidence on the table, the  
17 only evidence from which you make a final determination as to  
18 guilt or none guilt with respect to the crime that the Court  
19 will submit to you to consider.

20 Each and every one of you has in his or her power  
21 of thinking to draw proper, reasonable, just inferences from  
22 the testimony and the exhibits and that stipulation, and to  
23 determine the probabilities arising therefrom in this case  
24 after carefully analyzing, weighing and considering the  
25 testimony of each and every witness and the totality of the

JC-F

## JUDGE'S CHARGE

1 testimony of all of the witnesses in addition to the exhibits  
2 and the stipulations.

3 The defendant, you know, is entitled to every  
4 inference in his favor which reasonably can be drawn from the  
5 evidence. And where two inferences may be drawn, one  
6 consistent with guilt and one consistent with none guilt,  
7 Mr. Delgado is entitled to the inference of none guilt.

8 Other considerations that may cross your mind such  
9 as sympathy, for instance, and on the other extreme some  
10 sense of community justice because this is a crime  
11 unfortunately in our streets, none of that has any law in  
12 here whatsoever.

13 One of your chief function as judges of the facts  
14 is to determine the credibility, the reliability, the  
15 truthfulness of each and every witness that has come forward.  
16 You and you alone have the power to say whether or not a  
17 witness is truthful, untruthful, credible or less than  
18 credible, reliable or unreliable, and what weight you wish to  
19 inscribe or assign to that particular witness.

20 You must study the witness and review that study  
21 to come here and testify, the bearing of the witness on the  
22 witness stand, the presentation of the witness and the  
23 testimony he or she gave. The carriage, as we say, of how  
24 the witness seated therein impressed you. The witness' means  
25 or motive. The interest or motive the witness coming here to

JO-F

## JUDGE'S CHARGE

1 testify, if you find any. The probability or improbability  
2 of the witnesses' testimony on its face. The intelligence or  
3 less lack of intelligence of the witness. The manner of  
4 testifying, the attitude, any prior bad acts that you have  
5 become aware of.

6 You should ask yourself was the witness neutral,  
7 friendly, hostile. Was the witness frank, honest, reliable,  
8 trustworthy, accurate in the recitation of the fact. Did the  
9 witness demonstrate bias perhaps or had some reason to come  
10 here and testify the way the witness did or to testify  
11 falsely or give us a half truth? All of these matters are  
12 left to you to decide.

13 They are many aides in determining whether or not  
14 a person tells the truth. We use them everyday in matters of  
15 serious importance in our own life. You are invited to apply  
16 any little test you feel comfortable with in determining  
17 whether you can trust what is being told to you in any matter  
18 of serious importance in your own life. Apply that same  
19 little rule you might use to the witnesses that have come  
20 here. There are many aides in determining whether or not a  
21 person is telling the truth. We implore them -- apply them  
22 everyday. Again, I commend to you to implore them here.

23 You have heard them examine and cross-examine. In  
24 deciding you should consider their testimony just as you  
25 would in a matter of serious importance in your own life. In

JO-F

## JUDGE'S CHARGE

1 determining the credibility of any witness or the weight you  
2 wish to inscribe to a witness' testimony, again, apply those  
3 same rules that you use in guiding yourselves in everyday  
4 life.

5 You have the right to consider whether any witness  
6 is actuated by bias or prejudice or have an interest on the  
7 outcome of the case or that might permit him to testify or  
8 her to testify to something other than the full truth.  
9 Whether to testify falsely or again using the word give us a  
10 half true or colored the truth. You must penetrate and make  
11 that determination as to each and every witness that has come  
12 here.

13 Remember, there is no legal presumption whatsoever  
14 that an interested witness lied such as there is no legal  
15 presumption whatsoever that an apparently disinterested  
16 witness tells the truth. The whole question of witness  
17 interest in the case, if you find any, is for you to  
18 determine and determine how it affects that witness'  
19 testimony and how you should treat that testimony in your  
20 overall assignment to make a final determination as to guilt  
21 or none guilt of Mr. Delgado.

22 If in your deliberations you find that any witness  
23 has willfully testified falsely as to any material fact, is  
24 unbelievable on his or her face, you are at perfect liberty  
25 to disregard the entire testimony of that witness or you may

JO-F

**JUDGE'S CHARGE**

1 disregard so much of it as you don't think don't come up to  
2 the standard that we are looking for and are deviant in  
3 testimony, and you may disregard that as the case may be.

4 In this criminal case, as you know, as stated just  
5 a few moments ago, it is the quality of the testimony that is  
6 controlling never the quantity or the number of witnesses  
7 brought by either side, but rather the quality of what each  
8 witness imparts to us and the totality of what all the  
9 witnesses taken together tell us.

10 Questions, you know, are not evidence. It's the  
11 answers given to questions that constitute evidence. Do you  
12 understand that the section that is obvious is when a  
13 question is posed in such a manner as to elicit a positive or  
14 negative answer, a yes or no, then you are at perfect liberty  
15 to take the question and the answer and consider it as  
16 evidence.

17 Consider the testimony of every witness carefully.  
18 Determine whether you will accept or reject it in whole or in  
19 part. Whenever you find conflicting testimony which you are  
20 not able to reconcile do not hesitate to cast aside that  
21 which you deem exaggerated or mistaken or willfully false and  
22 accept only that which you deem to be truth.

23 If you find any witness has testified falsely  
24 intentionally, testified falsely as to any material fact, you  
25 may disregard that witness entire testimony or you may

00-F

**JUDGE'S CHARGE**

1 disregard so much that you may find untruthful and accept as  
2 much that you find has been truthful and accurate.

3 Some of the factors that you may wish to use and  
4 wish to consider in addition to your own little test in  
5 evaluating testimony of witnesses are as follows:

6 One, did the witness have an actual opportunity to  
7 see and to hear event about that he or she testified?

8 Did the witness have the ability to recall those  
9 events accurately in the matter here?

10 Was the testimony of the witness plausible and  
11 likely to be true or was it implausible and not likely to be  
12 true?

13 Was the testimony of the witness consistent or  
14 inconsistent with other testimony or evidence in this case?

15 Did the manner in which the witness testily  
16 reflect upon the truthfulness of that witness' testimony?

17 To what extent, if any, did the witness'  
18 background, training, educational experience affect the  
19 believability of that witnesses testimony?

20 Did the witness have a bias or hostility or some  
21 other attitude that might affect the truthfulness of the  
22 witness' testimony?

23 You may consider whether a witness has an interest  
24 in the outcome of the case or instead whether the witness has  
25 no interest in the outcome of this case.



JO-7

## JUDGE'S CHARGE

1           You are not required to reject the testimony of an  
2           interested witness should you find anyone as an interested  
3           witness or accept the testimony of a witness who has no  
4           apparent interest in the outcome of the case.

5           You may, however, consider whether an interest in  
6           the outcome or a lack of interest in the outcome affects the  
7           truthfulness of the witness' testimony. Remember, again,  
8           there is no legal presumption that apparently interested  
9           witnesses lie just as there is no legal presumption that an  
10          apparently disinterested witness tells the truth.

11          You may consider whether a witness has been  
12          convicted or engaged with the criminal authorities and  
13          whether if so and to what extent if any it affects the  
14          truthfulness of that witness' testimony here.

15          You are not to reject the testimony of any witness  
16          who has perhaps had run-ins with the law at an earlier time,  
17          convictions or other types of activities of a criminal  
18          nature. You may, however, consider whether the witness'  
19          criminal conviction or background or conduct has affected or  
20          has affected here the truthfulness of that witness'  
21          testimony.

22          You may consider whether or not a witness makes  
23          statements at this trial that are inconsistent with each  
24          other.

25          You may also consider whether a witness at this

JC-F

**JUDGE'S CHARGE**

1 trial made previous statements that are inconsistent with the  
2 testimony rendered in court.

3 You may also consider whether a witness testified  
4 to a fact here at trial that the witness omitted to state at  
5 a prior time when it would have been reasonable and logical  
6 for the witness to have stated that or those facts.

7 In determining whether it would have been  
8 reasonable or logical for the witness to have stated, omitted  
9 facts you may consider whether the witness' attention was  
10 called to the matter or whether and/or the witness was  
11 specifically asked about that matter.

12 If a witness has made such inconsistent statement  
13 or left out, made omissions, you may consider whether and to  
14 what extent they affect the truthfulness or accuracy of that  
15 witness' testimony here at trial.

16 Remember, the contents of a prior inconsistent  
17 statement are not proof of what happened. You may use  
18 evidence of prior inconsistent statement only to evaluate the  
19 truthfulness or accuracy of the witness' testimony given here  
20 at this trial.

21 You may consider whether a witness' testimony is  
22 consistent with testimony of other witnesses or with other  
23 evidence in the case. If there were inconsistencies by or  
24 among witnesses you may consider whether they were  
25 significant inconsistencies related to important facts or

CO-F

## JUDGE'S CHARGE

1 instead were the kind of minor inconsistencies that one may  
2 readily expect from a multitude of witnesses and the passage  
3 of time.

4 In this case you have heard the testimony of  
5 police witnesses. You already know that the police are too  
6 be given the same evenhanded scrutiny, objectivity and  
7 critique as any lay witness. No more. No less.

8 You have heard testimony about the prosecutor  
9 speaking to a witness about the case before the witness  
10 testified here at trial. There is nothing absurd of that  
11 preparation of witness prior to calling witnesses to sit on  
12 the witness stand by an attorney. It's considered as good  
13 practice and no aspersion should be cast upon either the  
14 District Attorney or the defense counsel in having propped,  
15 if I can use the word, a witness, propped that is, the  
16 witness before the witness took the witness stand.

17 You have heard also that a witness read certain  
18 materials pertaining to the case before the witness testified  
19 at trial. Once again the Court -- the law does not prohibit  
20 a witness from doing so.

21 Now, some particular conflicting testimony that  
22 you will have to take under consideration, you will recall  
23 that the police testimony is such that Mr. Delgado gave some  
24 statements one of which was the video that you saw and the  
25 other one which was a written statement. And the police

JO-F

## JUDGE'S CHARGE

1 maintains that prior to eliciting that statement, that is the  
2 written statement, they gave certain cautions to the  
3 defendant and he understood them. You heard from the  
4 defendant that that didn't happen exactly the way that I just  
5 depicted, but rather he was asked to make a written statement  
6 and then thereafter was given the warnings that should have  
7 been offered before he was invited to make his statement.

8 Under our law before a person in custody may be  
9 questioned by the police or an Assistant District Attorney  
10 that person first must be advised of his or her rights;  
11 second, must understand those rights; and third, must  
12 voluntarily waive those rights and agree to speak to the  
13 police or to a District Attorney. If any one of these three  
14 conditions is not met a statement made in response to  
15 questioning was not voluntarily; and therefore, you must not  
16 consider it.

17 There is no particular point in time that police  
18 or a District Attorney are required to advise a defendant in  
19 custody of his or her rights so long as they do so before  
20 questioning begins. A defendant in custody needs to be  
21 advised only once of the rights regardless of how many times  
22 or to whom the defendant speaks after having been given such  
23 advised.

24 While there are no particular words that the  
25 police or the District Attorney are required to use in

JO-F

## JUDGE'S CHARGE

1       advising a defendant in custody, in sum and substance the  
2       defendant must be advised: (1) did he or she have the right  
3       to remain silent; (2) did anything he or she says may be used  
4       against him or her in a court of law; (3) that he or she has  
5       the right to consult with a lawyer prior to answering any  
6       question and the right to the presence of a lawyer during any  
7       questioning; and (4) that if he or she cannot afford a  
8       lawyer, if that is so, one will be provided for him or her  
9       prior to any questioning.

10               Before you may consider as evidence a statement  
11       made in this case by Mr. Delgado in response to questioning  
12       you must find beyond a reasonable doubt that Mr. Delgado was  
13       advised of his or her rights, understood those rights,  
14       voluntarily waived those rights and agreed to speak to the  
15       police or an Assistant District Attorney. If you do not make  
16       such findings then you must disregard the statements and not  
17       consider it.

18               We have an expert witness, the doctor from the  
19       medical examiner's office. Whenever there are matters, what  
20       we call in the law beyond the ken of jury, that is beyond the  
21       common knowledge as lay person like ourselves to deal with  
22       something, in this case medical type testimony, the Court is  
23       entitled and has in this case to impanel or recognize in the  
24       witness box a person as an expert. And you will recall we  
25       did that with respect to the medical examiner, and you will

JO-E

## JUDGE'S CHARGE

1 recall that the medical examiner offered her opinion as to  
2 certain matters, technical medical forensic as you yourself  
3 saw.

4 The rule is this, if you find evidence different  
5 from what the expert relied upon to give and to formulate and  
6 to pronounce in court expert opinion, you are at perfect  
7 liberty if you find different basis for what it was testified  
8 to disregard totally the expert's opinion. On the other hand  
9 as well, if you find from the totality of all the evidence in  
10 this case, facts different again from the facts relied upon  
11 by the expert, you are at perfect liberty to disregard  
12 likewise that expert's opinion.

13 We have other types of witnesses. We have the  
14 defendant. He testified on his own behalf. Didn't have to  
15 do it. He did it. A defendant is, of course, an interested  
16 witnesses since he has an interest in the outcome of the  
17 trial. You may, as jurors, wish to keep such interest in  
18 mind in determining the credibility and the weight to be  
19 given to Mr. Delgado's testimony.

20 Remember, a disinterested witness on the other  
21 hand is one who has no interest or an apparent no interest in  
22 the outcome of the trial. A factor you likewise may wish to  
23 consider in determining the credibility and weight to be  
24 given to that or those particular witnesses.

25 In summary, you should not reject the testimony of

JC-F

## JUDGE'S CHARGE

1 an interested witness merely because of such interest nor  
2 should you accept the testimony of the disinterested witness  
3 merely because of the disinterest.

4 Again, it's repeated to you there is no real  
5 presumption whatsoever that an apparently interested witness  
6 lies such as there is no apparent reason whatsoever that an  
7 apparently -- let me rephrase that. Just as there is an  
8 apparently disinterested witness tells the truth -- I will  
9 repeat that. No legal presumption whatsoever that an  
10 apparently interested witness lies just as there is no  
11 apparently -- apparently there is no --

12 MR. CANTOR: Legal presumption.

13 THE COURT: I can't see to get over it.

14 No legal presumption that an apparently  
15 disinterested witness tells the truth.

16 Presumption. You know as he sits there, right, he  
17 is presumed innocent. That presumption stays with him  
18 throughout the trial. You all promised regularly when the  
19 Court inquired of that. He still enjoys it. He enjoys it at  
20 this moment. When you go into the jury room you begin by  
21 saying Mr. Delgado is presumed innocent, and that presumption  
22 still stays with him unless and until a jury in its wisdom  
23 in deliberation, sequestered alone in the jury room decides  
24 because of the evidence that has been played on the table to  
25 strip away that presumption, to take off that cloth.

JO-7

## JUDGE'S CHARGE

1           The burden, of course, never shifts. He has no  
2           obligation to do anything. You know that. The burden is  
3           totally on the state. Totally on the government. Totally on  
4           the People to convince you in the first instance beyond a  
5           reasonable doubt, which we will explain momentarily, that  
6           burden never shifts. No defendant is required to prove  
7           anything let alone his innocence. And each element of the  
8           crimes to be submitted to you, as will be defined  
9           momentarily, must be proven by the People beyond a reasonable  
10          doubt.

11           There have been some verbal exchanges during the  
12          course of this trial between counsel, between the Court and  
13          counsel. You disregard those totally. Disregard those.  
14          They have nothing to do with evidence in this case. They are  
15          not to be constituted as evidence that colloquy back and  
16          forth.

17           Attorneys have the obligation, indeed it is  
18          commendable if it's done appropriately, to be exuberant, to  
19          be enthusiastic for what it is that he or she represents and  
20          we have seen examples of that during the course of the trial.  
21          Never should that be held against any party at trial. It's  
22          just a give and take of the fire. Let us say that often  
23          times at trial you get caught up in the enthusiasm of  
24          representing different interest, different body and different  
25          expectations.



JO-F

## JUDGE'S CHARGE

1 The Court likewise had colloquy. Once again, the  
2 Court's ruling for or against Mr. Cantor or Mr. Rosenfeld as  
3 to objections sustaining them or not, as the case may have  
4 been, should never be considered by you as any type of  
5 leaning by the Court one way or the other. Attorneys have  
6 obligations to stand and to object. You've seen that. And  
7 the Court's ruled; you've seen that. And, therefore, you are  
8 to create no aspersions as to any counsel who is exercising  
9 what he should be doing, the right to object and the right to  
10 see proper procedure is to follow it.

11 With regard to certain suggestions that may have  
12 come out along those issues about witnesses who are not here  
13 and so forth and so on, the People have no obligation  
14 whatsoever to produce any other witness except for those they  
15 wished to produce, and in the order they wish to produced.

16 You heard reference to certain technical matters,  
17 legal matters, Sandoval ruling, and you heard the word parole  
18 or on parole. You know the defendant, it's come out, has been  
19 incarcerated for many months prior to this trial, three  
20 years, 30 months I should say. They were certain comments  
21 made about whispering here at the bench. I assure you none  
22 of that is evidence and you are not to consider it and should  
23 not sway you in anyway.

24 And for the record, the police officer did bend  
25 over and said, must I answer that? And I said, yes. That

JO-F

## JUDGE'S CHARGE

1 was whispered, I guess, and as you can see it was not  
2 anything to affect one way or the other the outcome of this  
3 trial, and you already know the Court has no feeling as to  
4 the outcome of the trial. That's why you are here.

5 The rule, reasonable doubt. Let us go over again  
6 what does the law mean by reasonable doubt.

7 What is a reasonable doubt?

8 Reasonable doubt is a doubt for which you can give  
9 a reason and at the same moment you believe yourself acting  
10 reasonably in entertaining that doubt in light of what has  
11 been presented to you.

12 Let us repeat. Reasonable doubt is a doubt for  
13 which a reason can be given and at the same moment you  
14 believe that you are acting reasonably in entertaining that  
15 doubt. Not based on a guess or surmise some vague feelings  
16 not used to do what might be unpleasant to convict someone of  
17 a very high crime.

18 It's not a requirement of proof beyond all doubt.  
19 It doesn't mean that the People must come here and proof  
20 guilt to some impossible status beyond a shadow of a doubt as  
21 in television. Beyond a mathematical earnestly or scientific  
22 certitude. Impossible standard.

23 Proof of guilty beyond a reasonable doubt is a  
24 doubt for which a reason can be given and at the same time  
25 that you entertain that doubt you believe you are acting

JO-F

## JUDGE'S CHARGE

1 reasonably in light of what has come forward. It's not  
2 preponderance of the evidence; that you know is the standard  
3 in the civil side of our court. Rather it's the highest  
4 standard we have, proof of guilt beyond a reasonable doubt.

5 Therefore, the standard of reason must always  
6 prevail and when you are convinced, you have no doubt in  
7 reaching defendant's guilt, that is sufficient and you must  
8 come back and find him guilty of any one or more of the  
9 crimes as the Court will further explain for your  
10 consideration of it.

11 On the other hand, if your minds are wavering and  
12 you have a reasonable doubt arising out of the credibility,  
13 evidence or lack of insufficiency of such evidence, the  
14 benefit of that doubt must be given to the defendant and your  
15 verdict must be not guilty as to any one or more or all of  
16 the crimes that the Court will be giving to you for your  
17 consideration.

18 Momentarily, subject to punishment, you already  
19 know all about that. It has nothing to do with your fact  
20 finding. You find facts. You come back to a decision. You  
21 make your verdict. You are thanked and you are excused.

22 Subject to punishment, if any punishment is to be  
23 made out here or what kind of punishment if indeed any  
24 punishment needs to be made out. It's not for to you  
25 speculate, not to burden, not to overpower you, not to come

JO-F

## JUDGE'S CHARGE

1 up during the course of your deliberations. Nothing  
2 whatsoever to do with your deliberations.

3 Now, we've come to the second part of the charge.  
4 The Court will instruct you with respect to the material  
5 elements with which the defendant has been charged in being  
6 the three crimes that we are speaking of.

7 Remember, the Court does not have to marshal  
8 evidence or any referenced evidence the Court should make  
9 should not be considered by you more important than all of  
10 the evidence. You know all of the evidence, all of the  
11 testimony, all of the exhibits and the stipulations must be  
12 considered by you.

13 Now, with respect to the three crimes that the  
14 Court will be assigning to you for your consideration is  
15 murder in the second degree, manslaughter in the first  
16 degree, criminal possession of a weapon in the fourth degree.

17 With respect to the first two counts, murder in  
18 the second degree and manslaughter in the first degree, which  
19 you will consider in the alternative, and the Court will  
20 explain that to you momentarily, the defendant has raised the  
21 defense of justification. More commonly known as  
22 self-defense.

23 The defendant, however, is not required to prove  
24 that he was justified. It is the People's who are required  
25 to prove beyond a reasonable doubt that the defendant was not

JO-F

**JUDGE'S CHARGE**

1 justified in each of those strikes, those five strikes that  
2 you heard during the course of testimony.

3 Under our law a person may use deadly physical  
4 force upon another when and to the extent that he is  
5 reasonably believing it to be necessary to defend himself  
6 from what he reasonably believes to be the use of imminent,  
7 deadly physical force against him.

8 (Continued onto the next page.)  
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1 THE COURT: Let's go over some terms. Deadly  
2 physical force means physical force which under the  
3 circumstances in which it is used, is readily capable of  
4 causing death or other serious physical injury.

5 Serious physical injury means impairment of a  
6 person's physical condition which creates a substantial  
7 risk of death, or which causes death or serious and  
8 protracted disfigurement, protracted impairment of the  
9 health or protracted loss or impairment of the function of  
10 any bodily organ.

11 The determination of whether a person reasonably  
12 believes deadly physical force to be necessary to defend  
13 himself from what he reasonably believes to be the use or  
14 imminent use of deadly physical force by another individual  
15 against him must meet a two-test application that you must  
16 give that applies to this case: One, the defendant in this  
17 case Mr. Delgado must have actually believed that Mr. Sosa  
18 was using or was about to use deadly physical force against  
19 him, and that the defendant Mr. Delgado's own use of deadly  
20 physical force in each of those five knife blows was  
21 necessary to defend himself from deadly physical force;  
22 second, a reasonable person in the defendant's position  
23 knowing what the defendant knew, and being in the same  
24 circumstance would have had those same beliefs about the  
25 use of deadly physical force against him.

1           Thus, under our law of justification, it is not  
2           sufficient that the defendant honestly believed in his own  
3           mind that he was faced with defending himself against the  
4           use or imminent use of deadly physical force against him.  
5           An honest belief no matter how genuine or sincere may yet  
6           be unreasonable. To have been justified in the use of  
7           deadly force, the defendant Mr. Delgado, you must have  
8           honestly believed that each of those strikes was necessary  
9           to defend himself from what he believed honestly to be the  
10          use of imminent physical deadly force by Mr. Sosa against  
11          him, and a reasonable person in the defendant's position  
12          knowing what the defendant knew and being in the same  
13          circumstances would also have believed.

14           On the question of whether the defendant  
15          reasonably believed that deadly physical force was  
16          necessary to defend himself from what he reasonably  
17          believed to be the use or imminent use of such force  
18          against him by Mr. Sosa, it does not matter that the  
19          defendant was or may have been mistaken in such belief,  
20          provided that such belief was both honestly held and  
21          reasonable, notwithstanding the defendant would not be  
22          justified in using deadly physical force under any of these  
23          circumstances, one, the defendant would not be justified in  
24          using deadly physical force if he, Mr. Delgado in this  
25          instance, was the initial aggressor.

1 Initial aggressor means the person who first  
2 attacks or threatens to attack. That is the first person  
3 who uses or threatens the use of imminent offensive  
4 physical force. The actual striking of the first blow or  
5 inflicting of the first wound; however, does not  
6 necessarily determine who was the initial aggressor.

7 A person who reasonably believes that another is  
8 about to use deadly physical force upon him need not wait  
9 until he is struck or wounded. He may in such  
10 circumstances be the first to use deadly physical force so  
11 long as he reasonably believed it was about to be used  
12 against him. He is then not considered to be the initial  
13 aggressor even though he is the one who strikes the first  
14 blow or inflicts the first wound. Arguing, use of abusive  
15 language, calling a person names, any of those types of  
16 things, unaccompanied by physical threats or acts does not  
17 make a person an initial aggressor and does not justify  
18 physical force.

19 Two, the defendant would not be justified in  
20 using deadly physical force if he knew that he could with  
21 complete safety to himself avoid the necessity of using  
22 deadly physical force by retreating from the circumstances.

23 Three, the defendant would not be justified if  
24 his conduct was provoked by the defendant himself with  
25 intent to cause a physical injury.



1 In this case, if you so find on Mr. Sosa, the  
2 People are required to prove beyond a reasonable doubt that  
3 this defendant was not justified in using deadly physical  
4 force. It is thus an element of each of the crimes that we  
5 will be speaking about. As a result, if you find the  
6 People have failed to prove beyond a reasonable doubt that  
7 the defendant was not justified, then you must find the  
8 defendant not guilty of all counts.

9 With respect to the three crimes that we will now  
10 be taking, murder in the second degree, the indictment  
11 reads the defendant David Delgado on or about December 25,  
12 2009, in the county of the Bronx, with intent to cause the  
13 death of a person, Mr. Sosa, did cause the death of George  
14 Talarvera, Mr. Sosa by stabbing him with a knife, this is  
15 covered by Penal Law 125.25 (1) which quote reads, a person  
16 is guilty of murder in the second degree when, with the  
17 intent to cause the death of another person, he causes the  
18 death of such person.

19 The term intent used in this definition has its  
20 own special meaning. Intent means conscious aim or  
21 objective. Thus a person acts with the intent to cause the  
22 death of another when that person's conscious objective or  
23 purpose is in fact to cause the death of another.

24 In order for you to find the defendant Mr.  
25 Delgado guilty of this particular crime, murder in the

1 second degree, the People are required to prove to your  
2 satisfaction from all of the evidence in this case and  
3 beyond a reasonable doubt the following three elements:  
4 One, that on or about this same date in this same county,  
5 this defendant Mr. Delgado caused the death of Mr. Sosa;  
6 two, the defendant did so with the intent to cause the  
7 death of Mr. Sosa; three, that the defendant was not  
8 justified in his actions.

9 Therefore, if you find that the People have  
10 proven beyond a reasonable doubt each of those three  
11 elements, you must find the defendant guilty of the crime  
12 of murder in the second degree as charged in the first  
13 count that the Court is submitting to you.

14 On the other hand, if you find that the People  
15 have not proven beyond a reasonable doubt either one or  
16 more of those elements, you must find the defendant not  
17 guilty of the crime of murder in the second degree.

18 The second count the Court submits to you is  
19 manslaughter in the first degree. This you will consider  
20 in the alternative as the Court will further explain and as  
21 it will appear on the jury sheet.

22 The second count manslaughter in the second  
23 degree, the indictment reads as follows --

24 MR. CANTOR: Manslaughter in the first degree.

25 THE COURT: Thank you, Mr. Cantor.

1 MR. CANTOR: You're welcome, your Honor.

2 THE COURT: Strike that. The defendant, David  
3 Delgado on or about December 25, 2009, in the county of the  
4 Bronx did cause the death of George Talarvera, Mr. Sosa  
5 while acting with intent to cause serious physical injury  
6 to that person by stabbing him with a knife. This is  
7 covered by Penal Law Section 125.20 (1) quote, a person is  
8 guilty of manslaughter in the first degree when, with  
9 intent to cause serious physical injury to another person,  
10 he causes the death of such person.

11 Serious physical injury means impairment of  
12 physical condition which creates a substantial risk of  
13 death, or which causes the death or serious and protracted  
14 disfigurement, protracted impairment or protracted loss or  
15 impairment of the function of any bodily organ.

16 As you already know, intent likewise as we've  
17 already gone over, means any conscious objective or  
18 purpose.

19 Thus a person acts with intent to cause serious  
20 physical injury to another when that person's conscious  
21 objective or purpose is to cause serious physical injury to  
22 another.

23 In order for you to find the defendant guilty,  
24 Mr. Delgado of this particular crime, manslaughter in the  
25 first degree, the People are required to prove from all of

1 the evidence in the case beyond a reasonable doubt the  
2 following three elements: One, that on or about this same  
3 date in this same county, this same defendant Mr. Delgado  
4 caused the death of Mr. Sosa; two, that the defendant did  
5 so with the intent to cause serious physical injury to Mr.  
6 Sosa; three, that the defendant was not justified in his  
7 actions.

8 Therefore, if you find that the People have  
9 proven beyond a reasonable doubt each of those elements,  
10 you must come back and find him guilty of the crime of  
11 manslaughter in the first degree as charged.

12 If on the other hand, you find that the People  
13 have not proven beyond a reasonable doubt either one or all  
14 of those elements, any one of them is sufficient, just like  
15 in the murder charge, then you must come back and find the  
16 defendant not guilty of the crime of manslaughter as  
17 charged in the second count.

18 Thirdly and finally, criminal possession of a  
19 weapon in the fourth degree. Let me just to refresh you,  
20 with regard to murder in the second degree, remember that's  
21 intent to cause death, which does cause death.

22 With regard to manslaughter in the first degree,  
23 it's intent to cause serious physical injury which not  
24 withstanding ends up causing death. That's the  
25 distinguishing feature between those two crimes of murder

1 in the second degree and manslaughter in the first degree,  
2 which the Court invites you to consider in the alternative.  
3 This Court will have more to say in a moment.

4 And the final criminal possession of a weapon in  
5 the fourth degree. The indictment reads the defendant,  
6 David Delgado on or about December 25, 2009, in the county  
7 of the Bronx did possess a knife with intent to use the  
8 same unlawfully against another.

9 You already know from an earlier instruction  
10 there's no requirement for the People to bring in that  
11 knife, to have recovered that knife. It's sufficient if  
12 you believe beyond a reasonable doubt that a knife was used  
13 that night and was used in the manner in which it was  
14 claimed to have been used.

15 Criminal possession of a weapon in the fourth  
16 degree, the knife, covered by Section 265.01 (2) of the  
17 Penal Law, a person is guilty of criminal possession of a  
18 weapon in the fourth degree when that person knowingly  
19 possesses a knife or other dangerous or deadly instrument  
20 or weapon, here we are only talking about the alleged  
21 knife, with intent to use same unlawfully against another.

22 Possess means to have physical possession of or  
23 to otherwise exercise dominion and control over tangible  
24 piece of property, the knife, if you so believe.

25 A person knowingly possesses the knife when that

1 person is aware that he is in possession of the knife.

2 Intent you already know means conscious objective  
3 or purpose. Thus a person acts with intent to use a knife  
4 unlawfully against another when his or her conscious  
5 objective or purpose is to use it unlawfully against  
6 another.

7 In order for you to find the defendant guilty of  
8 this particular crime, the People are required to prove to  
9 your satisfaction and from all of the evidence in the case  
10 beyond a reasonable doubt, each of the following three  
11 elements: One, that on or about this same date in this  
12 same county, this same defendant, Mr. Delgado possessed a  
13 knife; two, that the defendant did so knowingly; three,  
14 that the defendant did so with the intent to use it  
15 unlawfully against another.

16 Therefore, if you find that the People have  
17 proven beyond a reasonable doubt each of those elements,  
18 you must find the defendant guilty of the crime of criminal  
19 possession of a weapon in the fourth degree as charged.

20 On the other hand, if you find that the People  
21 have not proven beyond a reasonable doubt any one or more  
22 of those elements, you must find the defendant not guilty  
23 of the crime of criminal possession of a weapon in the  
24 fourth degree.

25 Now, ladies and gentlemen of the jury, thank you

1 for your patience. I want to take a moment to confer with  
2 both counsel to see if there's something the Court perhaps  
3 did not state as clearly as it should have stated or  
4 omitted to say or something that should be corrected. So  
5 give us just a few moments.

6 Counsel, madam reporter.

7 (Whereupon, the following takes place, on the  
8 record, at the sidebar, among the Court, the assistant  
9 district attorneys, defense counsel, and outside the  
10 hearing of the defendant and the jury.)

11 THE COURT: Do you waive the presence of your  
12 client?

13 MR. CANTOR: I do.

14 THE COURT: Very good. Gentlemen, now, any  
15 omissions, corrections?

16 MR. CANTOR: Exceptions.

17 THE COURT: Exceptions?

18 MR. CANTOR: You told this jury -- I'd like to be  
19 where the prosecutor is, Judge.

20 THE COURT: Can you change, please?

21 MR. CANTOR: You told this jury that a defendant  
22 only be advised of his constitutional Miranda rights one  
23 time and waiving such before making a voluntary statement.  
24 What you didn't tell the jury is if they credit the  
25 defendant's version that he made a written statement, and

1 it was only after that written statement that he was read  
2 and signed a Miranda waiver form that a second  
3 administration of Miranda rights would have to be given  
4 before this jury could conclude that the videotape  
5 statement of my client was voluntary. What you told this  
6 jury was a misstatement of law.

7 If they credit my client's testimony he was only  
8 Mirandized after he made the written statement, then that  
9 may very well carry over, taint the administration of  
10 Miranda rights as reflected on the videotape by the  
11 assistant district attorney. You must most respectfully  
12 suggest and inform this jury that if they credit the  
13 defendant's testimony that he was only Mirandized after the  
14 written statement, it would require a second administration  
15 of Miranda rights by an assistant district attorney and  
16 knowing waiver thereof before they could consider the  
17 videotape statement of my client as evidence.

18 THE COURT: Okay.

19 MR. CANTOR: There are multiple administrations  
20 should my client's testimony be credited, and that is not  
21 to say that even the administration of a second Miranda  
22 warning by an assistant district attorney would remove the  
23 taint should they believe my client's testimony that he was  
24 Mirandized after the written statement. It would be a  
25 obvious statement that the People versus Bethea that would



1 run afoul, a mandate of the U.S. Supreme Court's decision  
2 in Lyons versus Oklahoma promulgated the doctrine, the cat  
3 out of the bag, once the cat is out of the bag, absent  
4 attenuation, no further statements are admissible as  
5 voluntary so I make that exception. I so make that  
6 request.

7 THE COURT: Mr. DA.

8 MR. ROSENFELD: I believe what the Court read to  
9 the jury is what's written in the CJT.

10 THE COURT: I believe the Court did say the  
11 context of what he said and what you maintained.

12 MR. ROSENFELD: I think any more would be  
13 marshaling the evidence. I think the CJT is sufficient.

14 The only thing People would request is you didn't  
15 mention spontaneous statements.

16 THE COURT: I did not because he was in the car.

17 MR. ROSENFELD: Right. Spontaneous statements do  
18 not require Miranda. The jury may consider it if they  
19 believe the officer did not influence the defendant or ask  
20 any questions, they may accept that without Miranda  
21 warnings.

22 THE COURT: All right. As to your objection, I  
23 think it was sufficient what I gave.

24 MR. CANTOR: Note my exception.

25 THE COURT: Your exception is noted.

1 MR. CANTOR: And my request? I made a request  
2 for a charge, a curative charge.

3 THE COURT: Yes, denied.

4 MR. CANTOR: Excepted.

5 THE COURT: And the application about what took  
6 place in the car, I'm not going to address that.

7 MR. CANTOR: Secondly, in defining intent, you  
8 never told this jury what -- in instructing this jury on  
9 intent, you never told this jury what the courts have told  
10 juries concerning intent virtually from time and  
11 memorialize that intent is the secret, silent operation of  
12 one's mind, and that we do not have an X-ray machine to  
13 peer into a defendant's mind. An intent can only be  
14 determined by a defendant's statements, the circumstances  
15 surrounding the incident. Period.

16 That has been the standard. That has been a  
17 standard instruction since I've been practicing and I take  
18 exception to your charge on intent. That's the key element  
19 in the defendant's case, that he did not and was not posed  
20 of the intent to kill, nor to inflict serious physical  
21 injury.

22 We ask your Honor to make a charge to this jury  
23 that indeed intent is the secret, silent operation of one's  
24 mind and intent can only be determined by a defendant's  
25 statements and the circumstances attending to the fatal

1 event.

2 MR. ROSENFELD: Your Honor, the Court read from  
3 the CJI and certainly tells the jury what the meaning of  
4 intent is.

5 THE COURT: Intent on three occasions and they  
6 were all from the CJI.

7 So your exception is noted.

8 MR. CANTOR: And my request is denied?

9 THE COURT: Yes. DA, anything?

10 MR. ROSENFELD: No.

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12 (Continued on next page.)

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JO-H

**JUDGE'S CHARGE**

1                   (Whereupon, the following takes place on the  
2                   record, in open court, in the hearing and presence of the  
3                   jury.)

4                   THE COURT: Madam forelady, ladies and gentlemen  
5                   of the jury, when you enter the jury room to deliberate you  
6                   will have various opinions advanced by various number of your  
7                   fellow jurors. You must make every effort to harmonize,  
8                   crystalize your thought so you speak as one as to the fact of  
9                   this particular case. You must not go into the jury room  
10                  with a closed mind. That's why the Court is urging you to  
11                  keep an open mind even at this second or at this moment as to  
12                  the guilt or none guilt of this gentleman without listening  
13                  to your fellow jurors and then coming to a final  
14                  determination.

15                  You have every right, if you believed you are  
16                  right, to stick to your argument and your conclusions. All  
17                  that's being said is not to close your mind so as to  
18                  prejudice the outcome conclusion to be considered by you, to  
19                  be arrived by you. To at least listen to the other jurors  
20                  with courtesy, considering just along in the interest of  
21                  coming to a fair, honest decision in the interest of justice  
22                  and under the law.

23                  Make every effort consistent with your conscious  
24                  and evidence to harmonize, crystalize who speaks truth. This  
25                  is the question that you are to determine. You do so to the

JO-H

**JUDGE'S CHARGE**

best of your abilities. You will apply commonsense, good judgment, impartially fairness. You do not let yourself be swayed by sympathy or prejudice in any way in analyzing the testimony. Decide this case wholly, totally, solely and exclusively on the evidence or lack or insufficiency thereof.

Your verdict shall be as follows:

Murder in the second degree: Guilty or not guilty. If you find him guilty of that you stop. You do not consider manslaughter in the first degree. You consider criminal possession of a weapon in the fourth degree.

Let us assume you find him not guilty of murder in the first degree you --

MR. ROSENFELD: Sorry. I think you meant second.

THE COURT: Murder in the second degree you then proceed to manslaughter in the first degree in the alternative and you make your determination there. If you find him not guilty of manslaughter in the first degree then you proceed to criminal possession of a weapon in the fourth degree.

So you consider murder in the second degree, and manslaughter in the first degree in the alternative. And if you find him guilty of either one you stop, that's fine. If you find him not guilty of both of them then you just consider criminal possession of a weapon in the fourth degree as indicated on the verdict sheet.

JO-H

## JUDGE'S CHARGE

1                   Let me share the verdict sheet with counsel to see  
2                   if they approve of the verdict sheet.

3                   Counselors, would you come back please.

4                   (Whereupon, the following takes place on the  
5                   record, at side bar, out of the hearing of the jury.)

6                   THE COURT: Mr. Cantor.

7                   MR. ROSENFELD: The defendant's presence?

8                   THE COURT: You waive?

9                   MR. CANTOR: Yes.

10                  As to murder in the second degree --

11                  THE COURT: Murder in the second degree first  
12                  count.

13                  MR. CANTOR: I have no problem with the annotation  
14                  if you find the defendant guilty of count one stop and report  
15                  your verdict to the Court. If you find defendant not guilty  
16                  as to count one then consider count two. However, under  
17                  count two, manslaughter in the first degree, you must have  
18                  another annotation. If you find the defendant guilty of  
19                  count two, stop. However, if you find the defendant not  
20                  guilty of count two, manslaughter in the first degree, go on  
21                  to consider the third count --

22                  THE COURT: Well, in any case --

23                  MR. CANTOR: -- criminal possession of a weapon in  
24                  the fourth degree.

25                  THE COURT: Just for clarification, with regard to

JO-H

## JUDGE'S CHARGE

1 the third one, they consider it in either case.

2 MR. ROSENFELD: That's not what you are saying in  
3 the first part.

4 MR. CANTOR: That's not what I am saying. This  
5 annotation which is in murder in the second degree is  
6 correct. Another annotation which is required under  
7 manslaughter in the first degree along the same line. If you  
8 find the defendant guilty as to count two stop and report  
9 your verdict to the Court.

10 THE COURT: No, they still have to consider  
11 criminal possession.

12 MR. CANTOR: They don't. It's a conclusory count.  
13 You see, it's a very mischievous count. But look at this, if  
14 you have guilty verdict either on count one and count two and  
15 not guilty verdict on count three, you are going to have a  
16 repugnant verdict because each of the first two count is a  
17 constitutently element requiring the cause of way by way of a  
18 knife. But if this jury finds either count one to result in  
19 a guilty verdict and count two manslaughter in the first  
20 degree of a guilty verdict, but goes on to consider count  
21 three and finds the defendant not guilty, that negates the  
22 position of the knife which is an element of man one and  
23 element of verdict two.

24 THE COURT: You want to say?

25 MR. ROSENFELD: I don't think possession of the

JO-II

## JUDGE'S CHARGE

1 weapon, attempted, is an element of either of those two  
2 crimes, but your Honor say -- just said as to count No. 1,  
3 murder in the second degree, that if you find the defendant  
4 to be guilty to stop and you are then saying go to Count  
5 No. 3. Here it says stop and report.

6 THE COURT: Yes, I know.

7 MR. ROSENFELD: So if you can correct that.

8 MR. CANTOR: Count three.

9 THE COURT: It's suggesting --

10 MR. CANTOR: It's mischievous.

11 THE COURT: I agree with you. When I say I agree  
12 with you I mean about the importance of this. Here they stop  
13 and we forget about criminal possession.

14 MR. CANTOR: Criminal possession of a weapon in  
15 the fourth degree. What I am --

16 THE COURT: They can still consider criminal  
17 possession of a fourth independent of these two elements.

18 MR. CANTOR: What happens -- excuse me. The  
19 element of both murder and manslaughter is death by stabbing.

20 THE COURT: Yes.

21 MR. CANTOR: What if they find he didn't commit  
22 the crime, but contained a weapon and used against another?  
23 That negates the element of murder two and man one.

24 THE COURT: Now, are you saying here stop?

25 MR. CANTOR: Stop.



JO-11

## JUDGE'S CHARGE

1 THE COURT: End of story?

2 MR. CANTOR: If you find not guilty there.

3 THE COURT: If guilty stop end of story?

4 MR. CANTOR: Right.

5 THE COURT: If you find not guilty.

6 MR. CANTOR: Go to two, stop.

7 THE COURT: If you find not guilt on one to stop  
8 end of story.

9 MR. CANTOR: You find not guilty on two --

10 MR. ROSENFELD: Go to three.

11 MR. CANTOR: -- end of story. Delete three.

12 THE COURT: I can go with that.

13 MR. ROSENFELD: I see what you are saying.

14 THE COURT: I thought about that last night.

15 MR. ROSENFELD: Okay.

16 MR. CANTOR: Delete it. And you will tell them to  
17 stop and report to the Court. You can tell them that it's  
18 the Court's decision in the interest of clarity and lucidity  
19 for this jury's deliberations you are withdrawing from their  
20 consideration count three of criminal possession of a weapon  
21 in the fourth degree, and you just take this -- this  
22 annotation and you repeat it on the man one if you find him  
23 guilty.

24 THE COURT: What do you want it to say?

25 MR. CANTOR: If you find defendant guilty or not

JO-H

## JUDGE'S CHARGE

1 guilty, stop, period.

2 MR. ROSENFELD: So you don't have to repeat  
3 anything.

4 THE COURT: If you find defendant guilty of murder  
5 in the second degree stop and report your verdict.

6 MR. ROSENFELD: That's correct.

7 THE COURT: And if you find the defendant not  
8 guilty as to count one which we just say --

9 MR. CANTOR: -- go on --

10 THE COURT: -- to consider count two manslaughter.

11 MR. CANTOR: Yes.

12 THE COURT: Now, the annotation?

13 MR. CANTOR: Look, Judge, this is a very  
14 mischievous count, count three. Very mischievous. It can  
15 tend to an agonistic --

16 THE COURT: No, they can find -- believe that he  
17 had the knife prior to, possessed to justify.

18 MR. ROSENFELD: That's what I thought.

19 MR. CANTOR: But no one argued that. No one  
20 argued that, and it's your discretion. If you think it's  
21 confusing or mischievous, and it's a misdemeanor and he  
22 already served the maximum sentence on it.

23 THE COURT: So it should say if you find defendant  
24 guilty as to count --

25 MR. CANTOR: Two.

JO-H

## JUDGE'S CHARGE

1 THE COURT: -- as to count two stop.

2 MR. CANTOR: If you find the defendant guilty or  
3 not guilty as to count two stop.

4 THE COURT: Well, there is nothing more to do.

5 MR. CANTOR: Delete three for purposes of clarity.

6 THE COURT: Sh, sh, sh.

7 MR. CANTOR: Tell them for purposes of clarity and  
8 lucidity in attending the jury deliberations.

9 THE COURT: So we really don't have to put any  
10 little addition there just leave it as that and take that out  
11 cause it say goes to two.

12 MR. CANTOR: Yeah, you are going to correct it.  
13 You are going to tell them for clarity --

14 THE COURT: I am not concern about that.

15 MR. CANTOR: -- and lucidity.

16 THE COURT: We agreed on that? Do you object?

17 MR. ROSENFELD: So you are going to say I thought  
18 along --

19 THE COURT: This --

20 MR. ROSENFELD: -- manslaughter in the first  
21 degree, if you find him guilty stop, don't go any further.  
22 If you find him not guilty you are going to say stop.

23 THE COURT: No, we don't have to say anything. We  
24 just delete that.

25 MR. ROSENFELD: By deleting they are going to

JO-H

## JUDGE'S CHARGE

1 infer it's proved separate.

2 MR. CANTOR: If you find guilty on count two,  
3 render your verdict accordingly. After count two you can put  
4 a command after that, render your verdict accordingly and  
5 then delete three.

6 THE COURT: As to count two stop and report your  
7 verdict to the Court, okay. You got that?

8 THE CLERK: No.

9 MR. CANTOR: Look, do we have another copy of  
10 this? I'll just write it up there. Can I remark this?  
11 Okay. Give me a moment.

12 THE COURT: Mark it.

13 (Whereupon, there was a brief pause in the  
14 record.)

15 THE COURT: I can't read what you wrote.

16 MR. CANTOR: Let me read it out loud. It says if  
17 you find -- if you find guilty or not guilty as to count two,  
18 manslaughter in the first degree, stop and report your  
19 verdict to the Court. This is taking out -- you are  
20 exercising your discretion.

21 THE COURT: Yes, another clarity.

22 MR. CANTOR: To promote clarity and lucidity.

23 THE COURT: Yes.

24 MR. CANTOR: That's your discretion.

25 THE COURT: You have any objection to that?

JO-II

## JUDGE'S CHARGE

1 MR. ROSENFELD: I am trying to read it.

2 (Whereupon, there was a pause in the record.)

3 MR. ROSENFELD: Again, as the Court just indicated  
4 you will explain to the jury for clarity and no other reason.

5 THE COURT: Yes, yes. And then we will get  
6 together and clean it.

7 MR. CANTOR: Print up a new one.

8 THE COURT: And we will mark it.

9 MR. CANTOR: And I will put my signature on that.  
10 Should be fine. You are welcome.

11 (Whereupon, the following takes place on the  
12 record, in open court, in the hearing and presence of the  
13 jury.)

14 THE COURT: All right. Madam Fore\_lady, and ladies  
15 and gentlemen of the jury, the Court in its discretion is  
16 going to give two crimes to consider. Murder in the second  
17 degree, we've gone over that. If you find him guilty you  
18 stop, you come back. If you find him not guilty you go on to  
19 manslaughter in the first degree. Guilty or not guilty you  
20 come back. You don't have to consider the weapon's  
21 possession charge, okay.

22 Now, we have a little situation. We will give you  
23 a quick time to get a sandwich or whatever before you begin  
24 your deliberations. Once those sandwich people come back  
25 upstairs to the jury room and you have all your jurors, then

JC-H

## JUDGE'S CHARGE

1 at that moment you commence your deliberations; do you  
2 understand?

3 THE JURY: Yes.

4 THE COURT: I will now give you over to the  
5 sergeant. Why don't we say be back here, those who want to  
6 go, no later than three o'clock. The door will be opened.  
7 You can just gather and when you have all 12 jurors you may  
8 begin your deliberations.

9 The Court stands ready to assist you in any way.  
10 After many years of presiding here I can tell you that  
11 sometimes the jury asks for testimony of "X," and we bring  
12 the jury in and we agree to the testimony of "X," and after  
13 half hour of reading "X's" testimony and people shaking their  
14 heads cause all that they really wanted to know was what did  
15 "X" say about such and such. So try to narrow your questions  
16 so as we can answer promptly. On the other hand we are  
17 prepared to read back the entire trial if you think it's  
18 necessary. So whatever is your pleasure.

19 You may follow the sergeant. The alternate,  
20 please stay in place.

21 (Whereupon, the jury exits the courtroom.)

22 THE COURT: Madam alternate, you may also go have  
23 lunch and then come back here okay.

24 THE JUROR: Okay.

25 THE COURT: But see the officer and the sergeant

JO-H

## JUDGE'S CHARGE

1 will give you the place that you will be put.

2 THE JUROR: Thank you.

3 THE COURT: Thank you, ma'am.

4 (Whereupon, the alternate exits the courtroom.)

5 THE COURT: All right. Having -- the jury having  
6 been excused, I would like, just by way of housekeeping,  
7 would you both agree after actually marking everything that  
8 all of it will be turned over, that is exhibits, to the care  
9 of the clerk? And if needed, with the exception of the tape,  
10 if needed, they be sent up and furnished. Any objections to  
11 that?

12 MR. CANTOR: I have none as long as I am notified  
13 as soon as possible.

14 THE COURT: Yes, of course.

15 MR. CANTOR: I am now turning over my only exhibit  
16 to the clerk.

17 THE COURT: But that's the other part.

18 MR. CANTOR: I am sorry?

19 THE COURT: Please give to the clerk the number  
20 where you can be reached at momentarily. Should you not hear  
21 from the Court beginning on a half hour -- starting at 3:30,  
22 then call the Court every half hour to see if there is any  
23 update. I will have the clerk to transcribe this verdict  
24 sheet and once we have it we will all initial it.

25 (Whereupon, there is a brief luncheon recess taken

JO-H

**JUDGE'S CHARGE**

1 and the case adjourned to 3:00 p.m. with the jury to commence  
2 deliberations.)

3 (Continued onto the next page.)

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1                   (Whereupon, the following takes place, on the  
2 record, in open court, in the presence of the Court, the  
3 assistant district attorneys, defense counsel, the  
4 defendant and outside the presence of the jury.)

5                   THE COURT: Good afternoon. Mr. Clerk.

6                   THE CLERK: Case on trial, People of the State of  
7 New York against David Delgado. Let the record reflect the  
8 presence of the district attorney's office, defense  
9 attorney and defendant. Sworn jurors are not present at  
10 this time.

11                  THE COURT: All right. We have before us a note,  
12 which the Court marked as its own Exhibit Number 2,  
13 "description on what is the elements on murder and  
14 manslaughter." Period. "We would like to see physical  
15 damage photos that were done on Sosa and the sketch of the  
16 stab wounds." You've seen this note?

17                  MR. ROSENFELD: Yes, your Honor.

18                  THE COURT: You've seen it?

19                  MR. CANTOR: Yes.

20                  THE COURT: Both have seen it. All right.

21                  MR. CANTOR: The sketch and the photographs have  
22 been supplied by a court officer --

23                  THE COURT: They have.

24                  MR. CANTOR: -- to the jury. And with respect to  
25 the definition of murder and manslaughter, it's my position

1 that you give the jury the full charge that you initially  
2 gave concerning the constituent elements of each and every  
3 charge.

4 THE COURT: Do you have anything to say?

5 MR. ROSENFELD: No, your Honor. I'll leave it to  
6 the Court.

7 THE COURT: The Court will give them the  
8 elements, yes, on both of those crimes, but I don't think  
9 we're going to do it now.

10 MR. CANTOR: Judge, it's 12 to 3.

11 THE COURT: That's correct.

12 MR. CANTOR: It's a ten minute readback.

13 THE COURT: Actually, there is a very real reason  
14 which is court policy not to go beyond 5 o'clock for  
15 reasons having nothing to do with this court of course, but  
16 a general order has been issued. I tried to get an  
17 extension, but I was not successful. So we'll bring the  
18 jury out, we'll send them on their way and we'll see them  
19 on Monday morning.

20 MR. ROSENFELD: Your Honor, the only thing I  
21 would appreciate, I would ask the Court to add to the jury  
22 to not try to use the Internet or Google to find anything  
23 about the case.

24 THE COURT: Well, you heard what I say about not  
25 being detectives, researchers, all of that business.

1 MR. ROSENFELD: I understand. But if you could  
2 add --

3 THE COURT: All right. I'll add it.

4 MR. ROSENFELD: It has happened on another case.  
5 That's the only reason I bring it to the Court's attention.

6 THE COURT: All right. Yes, fine.

7 MR. CANTOR: Do you have that note? May I get a  
8 copy?

9 THE COURT: Sure.

10 Handing.)

11 COURT OFFICER: Jury entering.

12 (Whereupon, the jury entered the courtroom.)

13 THE COURT: Madam forelady, ladies and gentlemen  
14 of the jury. Mr. Cantor, you may be seated. Good  
15 afternoon. The Court is in receipt of your note, which the  
16 Court marks as its own Exhibit Number 2 indicating  
17 "description on what the elements on murder and  
18 manslaughter," and then "pictures physical damage that were  
19 done on Sosa and the sketch of the stab wounds," both of  
20 which have been delivered to you.

21 With regard to the elements, of course we'll give  
22 you the elements, but not now. The day has come to an end.  
23 It's the end of the business day for the court. So we're  
24 going to recess until Monday morning at 9:30, Monday  
25 morning at 9:30.

1 MR. CANTOR: Judge, I hate to interrupt. May we  
2 step up with Mr. Rosenfeld?

3 (Whereupon, there was a discussion held, off the  
4 record, at the bench, among the Court, the assistant  
5 district attorneys, defense counsel, and outside the  
6 hearing of the defendant and the jury.)

7 (Whereupon, the following takes place, on the  
8 record, in open court, in the presence of the Court, the  
9 assistant district attorneys, defense counsel, the  
10 defendant and the jury.)

11 THE COURT: And of course on that day I will give  
12 you the elements. You are to cease your deliberations.  
13 You will only commence your deliberations again, madam  
14 forelady, when your jury is here. On Monday morning, we'll  
15 prepare to read you back these elements and we will do it,  
16 and I direct you all to be here at 9:30. If you have a  
17 problem, sir, you can see the clerk, he will help you.

18 And so I bid you a good weekend. Remember all  
19 the cautions. No discussions with anyone, not amongst  
20 yourselves. In the unlikely event anyone approaches you,  
21 report it to the Court. Remember you are not detectives,  
22 researchers, investigators. There's no need to check the  
23 books or use Google or anything like that to find out  
24 information. The Court has given you everything you need  
25 to know or will repeat what it is you asked like the

1 elements in the murder and the manslaughter and anything  
2 else you may desire.

3 So that is where we stand. Have a pleasant  
4 weekend. Come back as I say Monday morning 9:30. At that  
5 time, madam forelady, when all your jurors are gathered,  
6 you'll recommence your deliberations. Alternate likewise  
7 is now excused. Follow the officer. We'll see you then.  
8 If anybody has anything they wish to discuss, they can see  
9 the clerk. Good day.

10 COURT OFFICER: Jury exiting.

11 (Whereupon, the jury left the courtroom.)

12 THE COURT: Counselors, call the court every half  
13 hour if you're not here. You don't have to be here at  
14 9:30, but do call the court every half hour on the half  
15 hour if the court doesn't call you.

16 MR. ROSENFELD: Have a good weekend.

17 THE COURT: Make sure we retrieve the jury sheet,  
18 the verdict sheet.

19 (Whereupon, the trial is continued and the case  
20 is adjourned to Monday, July 9, 2012, at 9:30 a.m.)  
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1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX : CRIMINAL TERM - PART: T-14

3 ----- X

4 THE PEOPLE OF THE STATE OF NEW YORK,

Indictment #27/2010

5 - against -

Proceedings and Verdict

6  
7 DAVID DELGADO,

8 Defendant.

9 ----- X

10 July 9, 2012

11 265 East 161st Street  
12 Bronx, New York 10451

13 B E F O R E:

14 HONORABLE DOMINIC R. MASSARO,

15 J U S T I C E

16  
17 (Appearances same as previously noted.)

18 TRICIA L. ROBINSON, CSR, RPR  
19 Senior Court Reporter

20 (Whereupon, the following takes place, on the  
21 record, in open court, in the presence of the Court, the  
22 assistant district attorneys, defense counsel, and outside  
23 the presence of the defendant and the jury.)

24 COURT OFFICER: All rise.

25 (Whereupon, the Court entered the courtroom.)

1 MR. CANTOR: Judge, I would like to put something  
2 on the record. It pertains to his dress.

3 THE COURT: Bring him out.

4 (Whereupon, the defendant entered the courtroom.)

5 THE COURT: You may be seated.

6 MR. CANTOR: Friday night, corrections comes to  
7 his cell and confiscates all of his property, not just his  
8 clothes.

9 THE COURT: That has nothing to do with this  
10 trial.

11 MR. CANTOR: It certainly does. I'm not going to  
12 have him appear --

13 THE COURT: One second.

14 MR. CANTOR: He's in a T-shirt and shorts now.

15 THE COURT: The seizure of whatever they seized  
16 in his cell, that has nothing to do with this case. You're  
17 complaining that's the result of it?

18 MR. CANTOR: Yes.

19 THE COURT: Okay. Fine.

20 MR. CANTOR: Let me fine tune it a bit. I'm  
21 sorry. I spoke too broadly. The result of the  
22 confiscation of his clothes presently in the state of a  
23 T-shirt and shorts. I asked him for the reason. He knows  
24 not why. But I'm certainly not going to have him appear at  
25 this critical juncture appearing as if these deliberations

1 are meaningless to him, that he's insouciant, indifferent  
2 to what the jury is doing. I don't know why. Your Honor  
3 doesn't know why. I dare say the People don't know why.

4 THE COURT: Why what?

5 MR. CANTOR: The confiscation of his property.

6 THE COURT: There was an incident last week, I do  
7 not know for certain, but I suspect it might be in  
8 connection with that. But however, anything else you wish  
9 to say?

10 MR. CANTOR: Yes.

11 THE COURT: Well, you've already said it.  
12 Anything else?

13 MR. CANTOR: Yeah, he says his family can come  
14 and bring him clothes this evening. And I'm certainly not  
15 going to have him here, have him appear in front of this  
16 jury at this critical juncture.

17 I'm suggesting the following by way of a  
18 suggestion: That your Honor tell in the absence of anyone  
19 that you're unable to proceed with the answer to their  
20 query or queries on account of a Department of Correction  
21 action.

22 THE COURT: Okay. Thank you for that suggestion.  
23 Anything you wish to say, sir?

24 MR. ROSENFELD: Yes, your Honor. People would  
25 object to any delay in the court's proceeding. We're all



1 aware that the jury has been here for quite some time.  
2 Many of them are expecting to get back to work immediately.

3 THE COURT: You may be seated.

4 MR. ROSENFELD: Defendant is seated. He's  
5 sitting with his shirt, nothing dirty, what happens to be a  
6 clean Polo shirt. I can't see how in any way that would  
7 affect the jury's perception. I would object to the delay.  
8 Certainly, Judge, People have no idea about the dress or  
9 clothing.

10 THE COURT: The Court is inclined to accept that  
11 line. I think he's appeared here before without a shirt  
12 and tie.

13 MR. CANTOR: Never when the jury was here.

14 THE COURT: Oh, yes.

15 MR. CANTOR: He's had dungarees. He's never had  
16 shorts.

17 THE COURT: All right. I will address it.

18 MR. CANTOR: He is not --

19 THE COURT: I will address it. Please be seated.  
20 Number one, there's no offense with that T-shirt.

21 MR. CANTOR: There is. Tattoos are displayed.

22 THE COURT: Number two, I think very easily we  
23 can camouflage the fact that he has Bermuda shorts, let us  
24 say, rather than slacks, and that's just simply by  
25 adjusting the position of the seating. If he is seated at

1 the end where you are now seated, it's impossible to see  
2 through that desk. It will be completely non-objectionable  
3 because no one will even know what he's wearing.

4 MR. CANTOR: I would like a shirt for him.

5 THE COURT: Well, I'd be happy to get a shirt for  
6 him if we have, but we're not in the clothing business.

7 MR. CANTOR: I understand he's in the business.

8 THE COURT: I told you how I'm going to resolve  
9 it. Your objection will be noted.

10 MR. CANTOR: He's not gonna remain in the  
11 courtroom.

12 THE COURT: Who decides that?

13 MR. CANTOR: He does, Judge. He can absent  
14 himself from the courtroom.

15 THE COURT: If he wishes, that's his business of  
16 course. I'm telling you what I offer.

17 MR. CANTOR: Okay. Can he sit here presently so  
18 I can see whether your offer is violated?

19 THE COURT: I'm sure you can. Sergeant, please  
20 arrange it.

21 MR. CANTOR: Yes, that's satisfactory. Now all I  
22 need is a long-sleeve shirt.

23 THE COURT: We don't have it. And if he keeps  
24 his arms down just the way they are I see no tattoos. He's  
25 had short-sleeve shirts before.

1 MR. CANTOR: Can he pull his arms in?

2 THE COURT: So it's up to him to make that  
3 determination.

4 MR. CANTOR: He's never had a short-sleeve shirt  
5 in front of this jury.

6 THE COURT: That is not true. He came in one day  
7 without a tie and an open shirt.

8 MR. CANTOR: Yes, and a pair of jeans.

9 THE COURT: And a pair of jeans, that's true.  
10 And he came in another time with jeans or dungarees,  
11 however.

12 But let's get over that. You agree that you  
13 cannot see his feet in any way, shape or form?

14 MR. CANTOR: Can he lower his arms? Can he move  
15 in closer?

16 THE COURT: He can do whatever he does.

17 MR. CANTOR: Move in closer please, lean forward  
18 a bit. May he do that?

19 THE COURT: Yes, he may.

20 MR. CANTOR: All right, Judge, you're right.

21 THE COURT: I'm not insensitive to what you're  
22 saying, but there's other ways of correcting it. This is a  
23 two minute read before the jury.

24 MR. CANTOR: A what?

25 THE COURT: Two or three minute read as you know

1 and they will be gone.

2 All right. Let us bring out the jury.

3 Is that comfortable with you, sir?

4 THE DEFENDANT: It is.

5 THE COURT: All right.

6 Both of you have seen this from last week?

7 MR. ROSENFELD: Same note.

8 MR. CANTOR: It is. Did they receive the  
9 exhibits back this morning?

10 THE CLERK: Yes.

11 THE COURT: Another note from the jury, "Melissa  
12 testimony, Tango testimony, David testimony, video and  
13 transcript, Sosa and David criminal records of conviction."

14 MR. CANTOR: Transcript?

15 THE COURT: If possible. So they want all the  
16 testimony.

17 MR. CANTOR: What transcript?

18 THE COURT: Video and transcript. I guess that's  
19 the written statement. I'll check. It's video and  
20 transcript, Sosa and David. Anybody want to venture to  
21 guess?

22 MR. CANTOR: I just want you to ask what they  
23 mean by the transcript. I have no problem with Melissa's  
24 testimony.

25 THE COURT: What about David and Sosa?

1 MR. CANTOR: David and Sosa criminal records of  
2 conviction.

3 THE COURT: If possible.

4 MR. CANTOR: Of course it's possible. It's in  
5 the record. But it's the word transcript that throws me.  
6 They say video and transcript.

7 THE COURT: All right. We'll ascertain it.

8 Let's bring them out.

9 COURT OFFICER: Okay.

10 THE COURT: I'm going to give them the answer  
11 they wanted on Friday and then we'll address this.

12 COURT OFFICER: Jury entering.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: Madam forelady, ladies and gentlemen  
15 of the jury, the Court is in receipt of your new note which  
16 is marked as juror note number two and Court Exhibit Number  
17 3.

18 First we'll treat with the note that was left  
19 over from the other day where I know you asked for several  
20 things, all of which were delivered to you as the case may  
21 be, and then you wanted a definition of the elements on  
22 murder and manslaughter. We will do those first.

23 As you know, the Court has submitted to you for  
24 your deliberation two charges, murder in the second degree  
25 and manslaughter in the first degree. Each one has three

1 elements which we'll go over as to the law. You know that  
2 you are to consider these charges, murder in the second  
3 degree and manslaughter in the first degree in the  
4 alternative. If you find guilty of one, you don't have to  
5 address the other. If you don't find any guilt of course,  
6 then there's nothing to report except your verdict of not  
7 guilty.

8 Murder in the second degree according to Penal  
9 Law 125.25 (1) reads as follows: A person is guilty of  
10 murder in the second degree when, with intent to cause the  
11 death of another, he causes the death of such person.

12 Intent means conscious objective or purpose.

13 Thus a person acts with intent to cause the death  
14 of another when that person's conscious aim or objective is  
15 to cause the death of the other.

16 In order for you to find the defendant Mr.  
17 Delgado guilty of this particular crime, the People are  
18 required to prove from all of the evidence in this case and  
19 to your satisfaction beyond a reasonable doubt the  
20 following three elements:

21 One, that on or about this same date, in this  
22 same county, this same defendant caused the death of Mr.  
23 Sosa; two, that the defendant did so with intent to cause  
24 the death of Mr. Sosa; three, that the defendant was not  
25 justified in doing so.

1           Therefore, if you find that the People have  
2 proven beyond a reasonable doubt each of those three  
3 elements, you must find the defendant guilty of the crime  
4 of murder in the second degree.

5           On the other hand, if you find that the People  
6 have not proven beyond a reasonable doubt any one or more  
7 of those three elements, you must return a verdict of not  
8 guilty.

9           Manslaughter in the first degree now, again  
10 remember, you're considering in the alternative, if there's  
11 any guilt at all, manslaughter in the first degree comes  
12 under the purview of Penal Law 125. 20 (1) reads as  
13 follows: A person is guilty of manslaughter in the first  
14 degree when, with the intent to cause serious physical  
15 injury to another, he causes the death of that person.  
16 There's the distinguishing feature. One is the intent to  
17 cause death of a person and causes death. This one,  
18 manslaughter in the first degree, is intent to cause  
19 serious physical injury, but it results in death.

20           Serious physical injury means impairment of a  
21 person's physical condition which creates a substantial  
22 risk of death, or which causes the death or serious and  
23 protracted disfigurement, protracted impairment of health  
24 or protracted loss or impairment of the function of any  
25 bodily organ.

1 Intent you already know is conscious aim or  
2 objective.

3 Thus a person acts with intent to cause serious  
4 physical injury to another when that person's conscious aim  
5 or objective is to cause serious physical injury to another  
6 despite the fact that it results in death.

7 In order for you to find the defendant guilty of  
8 this particular crime, murder in the -- excuse me.

9 Manslaughter in the first degree, the People are required  
10 to prove from all of the evidence in this case beyond a  
11 reasonable doubt the following three elements: One, that  
12 on or about this same date, in this same county, this same  
13 gentleman caused the death of Mr. Sosa; two, that the  
14 defendant did so with the intent to cause serious physical  
15 injury to Mr. Sosa; three, the defendant was not justified  
16 in so doing.

17 Therefore, if you find that the People have  
18 proven beyond a reasonable doubt each of those elements,  
19 three elements, you must find the defendant guilty of the  
20 crime of manslaughter in the first degree.

21 On the other hand, if you find that the People  
22 have not proven beyond a reasonable doubt any one or more,  
23 but any one is sufficient, of those elements you must find  
24 the defendant not guilty of the crime of manslaughter in  
25 the first degree.



1 All right. That completes the response to your  
2 earlier note.

3 Now we go to the new note. "We the jury want,"  
4 it's not here, but it's obvious, "the testimony of Melissa,  
5 Tango testimony, David testimony, video and transcript,  
6 Sosa and David criminal records of conviction."

7 Just one clarification, and I address you, madam  
8 forelady, to speak on behalf of your jury, when you say  
9 video and transcript, what do you mean by transcript?

10 MR. CANTOR: Judge, I ask for a written response  
11 to your question by the jury.

12 THE COURT: Give them a chance to deliberate on  
13 it?

14 MR. CANTOR: Yes.

15 THE COURT: Unless they all agree here.

16 MR. CANTOR: No. I object to it and I ask that  
17 they respond in writing to your question, to your inquiry  
18 what do they mean by transcript.

19 THE COURT: I'll ask what do you mean by  
20 transcript?

21 MR. CANTOR: Note my objection.

22 THE COURT: If you know.

23 MR. CANTOR: Deliberations in the courtroom are  
24 forbidden, Judge.

25 THE COURT: Yes.

1 MR. CANTOR: And I'm objecting.

2 THE COURT: We're not deliberating at this  
3 moment. If you know.

4 THE FOREPERSON: We're interested in hearing his  
5 testimony and seeing the video and one of the other jurors  
6 asked for a transcript.

7 THE COURT: You really just want the video?

8 THE FOREPERSON: The video.

9 THE COURT: Juror number two, is that what is  
10 meant?

11 A JUROR: The video and the transcript of his  
12 testimony.

13 MR. CANTOR: Judge, I'm objecting to your --

14 THE COURT: Well, now --

15 MR. CANTOR: -- to your inquiry.

16 THE COURT: Please keep quiet when I speak.

17 MR. CANTOR: I'm going to make a record.

18 THE COURT: I said keep quiet when I speak.

19 MR. CANTOR: I've made my objection.

20 THE COURT: You can make a full record, but keep  
21 quiet when I'm speaking.

22 I'm going to allow you to go back into the jury  
23 room, see, because now he has a little different  
24 interpretation and I'm sure if I went down the line it will  
25 be more different. I don't want to go over the boundary,

1 so I'll let you go back. You may send another note  
2 clarifying what you mean by video and transcript, okay?

3 THE FOREPERSON: Okay.

4 THE COURT: Okay. Very good. Follow the  
5 officer.

6 (Whereupon, the jury left the courtroom.)

7 THE COURT: All right. The jury having been  
8 excused, Mr. Cantor, I implore you please do not try to  
9 speak louder than me to make your point. I'm always fair.  
10 I give you all opportunity to make it, even extend and  
11 reserve for you. There's no need to try to speak louder  
12 than me because in the final analysis you know the reporter  
13 when two people are speaking only takes what I say, not  
14 anybody else, so you're making no progress.

15 MR. CANTOR: I'm just impelled by motion of  
16 preservation when you hear with respect to Juror Number one  
17 in my opinion and in what you did to Juror Number one and  
18 only my opinion was wrong and then it became evident when  
19 you asked Juror Number two. The appropriate way is to do  
20 it by way of having the jury to return and discuss in en  
21 masse, put together a note, return to your Honor, your  
22 Honor show it to Counsel and then formulate whatever the  
23 Court deems an appropriate response. That's the right way  
24 and that's the lawful way.

25 THE COURT: You made your record. Anything you

1 wish to say?

2 MR. ROSENFELD: No, your Honor. I believe that  
3 asking one question to clarify a word is fine. I have no  
4 objection to that. I do have to ask the Court the last  
5 part of the note says something I believe Sosa and David.

6 THE COURT: Criminal records.

7 MR. ROSENFELD: Well, there is --

8 THE COURT: Of conviction.

9 MR. ROSENFELD: There is no Sosa criminal record  
10 of conviction in this case. There's a transcript of David  
11 Delgado's testimony that contains questions from the  
12 defense and questions from the People of his record of  
13 conviction so that actually is included in their request  
14 for the testimony of the defendant. There is nothing  
15 separate.

16 I would ask the Court to indicate to the jury  
17 that they're going to hear the testimony of the defendant  
18 which will include that, but there's been zero -- there  
19 isn't any record of conviction of Sosa.

20 MR. CANTOR: Can I see that?

21 (Handing.)

22 MR. CANTOR: There is reference -- oh, what an  
23 unclear note. This is the second sentence -- Sosa and  
24 David, and then there's writing which is erased out that's  
25 about an inch and a half in length, and then the word

1 criminal records of conviction and then if possible.

2 THE COURT: Yes. Okay.

3 MR. CANTOR: I don't know what that blank space  
4 is.

5 THE COURT: I don't either.

6 MR. CANTOR: We're gonna get a note that's gonna  
7 hopefully shed some light on this.

8 THE COURT: Okay.

9 MR. CANTOR: Criminal records of conviction.

10 THE COURT: Did Mr. Sosa did he have a record?

11 MR. CANTOR: Yes. Mr. Alberto Vasquez testified  
12 for over ten years he bought marijuana from Mr. Sosa, but  
13 there was no testimony.

14 THE COURT: That's not a criminal record, Mr.  
15 Cantor.

16 MR. CANTOR: No. If you'll allow me to finish,  
17 but there is no testimony on the record of a criminal  
18 record of Sosa.

19 THE COURT: Okay. Fine.

20 MR. CANTOR: But don't you find that odd that  
21 gap?

22 THE COURT: No, I do not.

23 MR. CANTOR: All right.

24 (Hanging.)

25 THE COURT: It's been erased, whatever it was she

1           erased it.

2                   MR. CANTOR: Hopefully, we'll get some  
3           elucidation.

4                   THE COURT: Perhaps we will. Perhaps we will  
5           not.

6                   MR. CANTOR: Well, certain parts of that note are  
7           very clear.

8                   THE COURT: In any event, I'm not going to  
9           delineate what could have said, what not. On the practical  
10          side, ma'am, I think you should go down and get your entire  
11          record. Everything is clear enough what has to be read.  
12          We'll go over the criminal record part of it at the  
13          appropriate moment. But we can begin as quickly as we can  
14          begin on all of these other people, Melissa, Tango, David.

15                   MR. CANTOR: Judge, the reporter -- I'm only  
16          speaking for myself, you'll make the ultimate  
17          determination, the reporter usually does that by reading  
18          the record and then exercising that which has been  
19          sustained and stricken, Judge. To do that  
20          contemporaneously with the reading is an impossible task.

21                   THE COURT: But it's a more practical approach.

22                   MR. CANTOR: You'll have unusually lengthy gaps  
23          of silence from the reporter. The reporter knows the  
24          methodology that is most utilitarian and she's told you  
25          that she would suggest she go back to her quarters and go

1 over the transcript and redact that which is not part of  
2 the record by way of your sustaining objections.

3 THE COURT: Would you like to weigh in?

4 MR. ROSENFELD: Well, obviously, I'm gonna leave  
5 it up to the experts, to the court reporter or the Court.  
6 But my suggestion would be whatever method is used, that  
7 perhaps we do, the first person requested was Melissa  
8 Dempsey, so if the court reporter feels she can't do it  
9 contemporaneously, needs to do it in advance, that she do  
10 Melissa Dempsey, then read to them Melissa Dempsey, then  
11 take a break because after, the reading will take an hour,  
12 an hour and a quarter, take a break, then she can do the  
13 next witness and do whatever redaction is necessary.

14 MR. CANTOR: Who's the next witness?

15 THE COURT: Tango.

16 MR. ROSENFELD: Then have that read back so we're  
17 not at least left with an hour or so gap, my suggestion,  
18 Judge. Whatever the Court wishes.

19 MR. CANTOR: By the way, Judge, a readback of  
20 Tango, they don't ask for Tango's criminal record, I have  
21 no problem with that. Let her read. Let her go over  
22 Melissa Dempsey. Let her forthwith, return, let her read  
23 Melissa Dempsey.

24 THE COURT: We'll see how it goes.

25 MR. CANTOR: We should wait a reasonable period

1 of time I'm suggesting presently for any note that comes  
2 forward.

3 THE COURT: Yes, I would concur.

4 MR. CANTOR: If you want to send the reporter --

5 THE COURT: Yes, why don't you go down.

6 MR. CANTOR: -- to begin her chores.

7 THE COURT: Yes, do that.

8 MR. CANTOR: I want this on the record.

9 THE COURT: Please make a record.

10 MR. CANTOR: The court reporter has suggested she  
11 return to her office and take up Melissa's testimony and  
12 redact that which is not an appropriate part of the record.  
13 I suggest we adhere. She's the expert to that. When she's  
14 finished with that, she can return and read the permissible  
15 Melissa's testimony. Once that is done, she can return to  
16 her office and continue to her office, the next one is  
17 Tango, let her do the same thing in her office with Tango,  
18 read it, excise that which is not part of it, come back to  
19 the court, read it, the jury then leave again and deal  
20 with, is it David is the third one?

21 THE COURT: Yes.

22 MR. CANTOR: Let her go back to her quarters in  
23 her office, deal with the redaction of David, come back and  
24 read it. I thought I heard correctly from the reporter,  
25 maybe she's changed her mind, I don't remember.



1 THE COURT: She did say exactly what you said.

2 MR. CANTOR: Then let her do that. By all means,  
3 if it meets with your approval.

4 THE COURT: No. I think that it will be very  
5 much more time consuming. It's voluminous testimony. I  
6 would like her to read it and as she goes along edit it.

7 (Whereupon, there was a brief recess.)

8 THE COURT: It's 1 o'clock. Let us bring back  
9 the jury. I'm going to excuse them for lunch.

10 Here is the note, madam reporter (handing).

11 THE COURT: Here is the note, "the jury cannot  
12 reach a unanimous verdict on murder charge. Can we  
13 deliberate on the manslaughter charge now?"

14 MR. CANTOR: The answer is yes.

15 THE COURT: The answer is yes. Okay. Bring them  
16 out.

17 (Handing.)

18 MR. CANTOR: My position is in view of note  
19 number three, is the jury still asking for the Court's  
20 compliance with note number one, or does note number three  
21 supersede the contents of note number two?

22 THE COURT: I take it to not supersede, but  
23 rather ask permission to begin deliberations on the  
24 manslaughter while not having to wait for the response to  
25 note number two, which is the only outstanding thing at

1 this point. That's my belief. What do you think, Mr.  
2 Rosenfeld?

3 MR. ROSENFELD: I haven't seen the note yet.

4 (Handing.)

5 MR. ROSENFELD: Your Honor, just if you look at  
6 the verdict sheet, the way you worded the verdict sheet,  
7 they have to deliberate murder in the second degree. If  
8 they find guilty, you said to stop and report the verdict  
9 to the Court. If they find not guilty, to deliberate on  
10 manslaughter in the first degree. What this note seems to  
11 indicate is that they haven't come to a decision on murder  
12 and I know they're not supposed to tell you.

13 THE COURT: No. But I would concur with that.  
14 The answer is yes.

15 MR. ROSENFELD: I understand. But they're going  
16 to have to report nevertheless on the verdict sheet.

17 THE COURT: Oh, yes, if they reach a unanimous  
18 verdict one way or the other.

19 MR. ROSENFELD: Okay.

20 THE COURT: We don't know which way they're  
21 speaking. But there's nothing to prevent. The answer is  
22 yes, simple yes, and that's it.

23 MR. CANTOR: Okay. You see what I'm concerned  
24 about, we can save an awful lot of time, does that note, a  
25 simple note, which the answer is one word yes.

1 THE COURT: I will inquire.

2 MR. CANTOR: And ask them to write a note back to  
3 you as to whether or not they want note number two  
4 answered, or does note number three supersede number two --

5 MR. ROSENFELD: I join in that.

6 MR. CANTOR: -- and make it moot.

7 MR. ROSENFELD: I join in that.

8 COURT OFFICER: Would the note be after lunch?

9 MR. ROSENFELD: The reporter is gonna have a  
10 thousand pages if she doesn't have it finished, at least  
11 you can give her the courtesy of knowing that.

12 THE COURT: Yes.

13 MR. CANTOR: Let them fashion the note whether it  
14 supersedes the contents of number two.

15 COURT OFFICER: Jury entering.

16 (Whereupon, the jury entered the courtroom.)

17 THE COURT: Madam forelady, ladies and gentlemen  
18 of the jury, the Court is in receipt of your note number  
19 three, which it marks as its own Exhibit Number 4, which  
20 reads as follows -- the note having been shared with  
21 counsel as in the previous instances, correct, Mr.  
22 Rosenfeld?

23 MR. ROSENFELD: Correct.

24 THE COURT: Correct, Mr. Cantor?

25 MR. CANTOR: Of course.

1 THE COURT: "The jury cannot reach a unanimous  
2 verdict on murder charge. Can we deliberate on the  
3 manslaughter charge now?" The simple answer to that is  
4 yes, you may. You may consider them any way you wish once  
5 you're in the jury room.

6 The question that the Court has which now raises  
7 another question which I will ask you to take a few minutes  
8 to deliberate on and respond, does this note -- in other  
9 words, can we deliberate on the manslaughter charge? Now,  
10 the answer being yes, does this note supersede the one for  
11 all of the testimony, or do you wish for us to still work  
12 on that while you're deliberating? So you have to think  
13 about that. We're going to send you inside back again so  
14 this way you can take a poll, madam foreperson, and see how  
15 you want that question answered.

16 THE FOREPERSON: Can you just explain that  
17 question?

18 MR. CANTOR: Judge, I can't hear that. There  
19 shouldn't be any discussion.

20 THE COURT: No. A question is being asked.

21 THE FOREPERSON: Just explain that a little  
22 better. What do you mean by that?

23 THE COURT: I'll explain it again. This last  
24 note, you can't reach a unanimous verdict at this point on  
25 murder, can you now deliberate manslaughter. The answer is

1 yes. You can always deliberate actually on both of them  
2 the same time or you can proceed one from the other, and  
3 you know the overall instruction which is on the face of  
4 the jury verdict sheet.

5 The question now is: Do you still want us to  
6 prepare all of this testimony for you to consider or does  
7 this note supersede?

8 A JUROR: Supersede.

9 THE COURT: You have to go back and write another  
10 note, so take a minute.

11 (Whereupon, the jury left the courtroom and there  
12 was a brief recess.)

13 COURT OFFICER: (Handling.)

14 THE COURT: Please mark it.

15 COURT OFFICER: Jury entering.

16 (Whereupon, the jury entered the courtroom.)

17 THE COURT: Madam forelady, ladies and gentlemen  
18 of the jury, the Court is in receipt of your note number  
19 four, which is marked as its own Exhibit Number 5, "yes, it  
20 supersedes the prior request."

21 Okay. Gives guidance to the Court in preparing  
22 what it is you may or may wish to have in the future, but  
23 not necessarily now.

24 All right. Now, we're going to break for lunch.  
25 Have a nice lunch. Come back after lunch quickly as you

1 can. Once you have everybody back, madam forelady, you  
2 will recommence your deliberations which will cease at this  
3 point until they are all re-gathered after the luncheon  
4 recess.

5 MR. CANTOR: Judge, may we go to the sidebar with  
6 the reporter, please?

7 THE COURT: Sure.

8 (Whereupon, the following takes place, on the  
9 record, in open court, in the presence of the Court, the  
10 assistant district attorneys, defense counsel, and outside  
11 the hearing of the defendant and the jury.)

12 THE COURT: Mr. Cantor.

13 MR. CANTOR: The law provides that once they've  
14 commenced deliberations they cannot be separated. They  
15 must remain sequestered except for to the end of the  
16 court's session when they can go home or whenever they  
17 choose. At this point in time, they cannot co-mingle with  
18 the outside world. The law is clear. They must be kept  
19 together.

20 THE COURT: I'm not certain of what you're  
21 relying on for that, but, Mr. District Attorney.

22 MR. ROSENFELD: Have you ordered lunch for them?  
23 Is that why we are taking a break?

24 THE COURT: No, I didn't order any lunch. I'm  
25 separating them to have lunch.

1 MR. ROSENFELD: With instructions to the  
2 deliberations or discussions?

3 THE COURT: I just said that.

4 MR. ROSENFELD: We don't sequester anymore.

5 THE COURT: No, we don't.

6 MR. CANTOR: We can't.

7 THE COURT: We know.

8 MR. CANTOR: I'm well aware. You cannot break up  
9 a jury once they have begun deliberations. You can however  
10 non-sequester them at the end of the court's session and  
11 that is send them home. You do this, Judge, at your peril.  
12 I'm just taking my position, noting it on the record and  
13 that's that.

14 THE COURT: Do you have any authority?

15 MR. CANTOR: You have the CPL here?

16 THE COURT: No.

17 MR. CANTOR: Is it in your robing room?

18 THE COURT: No.

19 MR. CANTOR: That's my position.

20 MR. ROSENFELD: Honestly, Judge, I'd have to  
21 check on it. I wasn't aware of any procedure. I know the  
22 procedure in this courthouse because of union rules we have  
23 to end the court's session in the morning at a certain  
24 time. We're actually ending the court's session for the  
25 morning.

1 THE COURT: But he's going further. He's saying  
2 at the point of ending they cannot be separated.

3 MR. ROSENFELD: I'm aware in the past they've  
4 ordered lunch in for the jurors. I'm not familiar with  
5 this, Judge. I'd have to leave it to the Court. I don't  
6 know.

7 MR. CANTOR: I will take my exception.

8 THE COURT: You want to check it out?

9 MR. ROSENFELD: This is a court administration.

10 THE COURT: I don't know there's a rule.

11 MR. CANTOR: Judge, I've said all that. I said  
12 that the law commands that they remain together. I have  
13 nothing further to say. If you rule in favor of me, so be  
14 it. If you rule in disfavor of me, I will note my  
15 exception.

16 THE COURT: I will do it the way I always did it.

17 (Whereupon, the following takes place, on the  
18 record, in open court, in the presence of the Court, the  
19 assistant district attorneys, defense counsel, the  
20 defendant and the jury.)

21 THE COURT: All right. As the Court indicated,  
22 we are now going to recess for lunch. Your deliberations  
23 are to stop. Do not have any discussion about the case  
24 with or amongst yourselves. You know that rule. Do not  
25 discuss with anyone until you are all gathered together



1 again after the lunch hour in the jury room. At that  
2 point, when you have everyone as before, you will commence  
3 or re-commence your deliberations.

4 All right. You may follow the officer.

5 COURT OFFICER: Jury exiting.

6 (Whereupon, the jury left the courtroom.)

7 THE COURT: Jury having been excused, please be  
8 back here -- well, you don't really have to be back here,  
9 stay in touch with the Court, but if you wish to come back  
10 here, you may come back here at 2:15. Okay.

11 MR. CANTOR: Thank you.

12 (Whereupon, a luncheon recess was taken.)

13 A F T E R N O O N S E S S I O N

14 (Whereupon, following a luncheon recess taken,  
15 court stands in recess awaiting jury's verdict.)

16 (Whereupon, the following takes place, on the  
17 record, in open court, in the presence of the Court, the  
18 assistant district attorneys, defense counsel, the  
19 defendant, and outside the presence of the jury.)

20 COURT OFFICER: All rise.

21 (Whereupon, the Court entered the courtroom.)

22 THE COURT: Good afternoon. Counsel, please  
23 approach.

24 (Whereupon, there was a discussion held, off the  
25 record, at the bench, among the Court, the assistant

1 district attorneys, defense counsel, and outside the  
2 hearing of the defendant and the jury.)

3 THE COURT: We're ready. Please mark this.

4 COURT OFFICER: Okay, Judge. Jury entering.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: Good afternoon.

7 JURORS: Good afternoon.

8 THE COURT: Madam forelady, ladies and gentlemen  
9 of the jury, the Court is in receipt of your note, number 5  
10 which it marks as its own Exhibit Number 6 indicating you  
11 have reached a verdict, is that correct?

12 THE FOREPERSON: Yes.

13 THE COURT: Please give the verdict sheet to the  
14 sergeant.

15 THE FOREPERSON: (Handing.)

16 COURT OFFICER: (Handing.)

17 THE COURT: (Handing.)

18 COURT OFFICER: (Handing.)

19 THE COURT: Mr. Clerk, you can proceed to take  
20 the verdict.

21 THE CLERK: Okay. This is People of the State of  
22 New York against David Delgado. Let the record reflect the  
23 presence of the defendant, his attorney, the district  
24 attorney and all of the sworn jurors.

25 Will the jury foreperson please rise -- first,

1 members of the jury, have you reached a decision as to  
2 count number one? Yes or no?

3 THE FOREPERSON: No.

4 THE CLERK: Okay. How say you as to count number  
5 two charging the defendant with manslaughter in the first  
6 degree, do you find the defendant guilty or not guilty?

7 THE FOREPERSON: Guilty.

8 THE CLERK: The verdict stands recorded, your  
9 Honor.

10 THE COURT: Do you wish for the jury to be  
11 polled, Mr. Cantor?

12 MR. CANTOR: Yes.

13 THE COURT: Please poll the jury.

14 THE CLERK: Okay. Members of the jury, you have  
15 said through your foreperson that you find the defendant  
16 guilty of manslaughter in the first degree. Juror No. 1,  
17 is that your verdict?

18 THE FOREPERSON: I'm sorry. Repeat that. I  
19 wasn't listening.

20 THE CLERK: Okay. Members of the jury, you have  
21 said through your foreperson that you find the defendant  
22 guilty of manslaughter in the first degree. Juror No. 1,  
23 is that your verdict?

24 THE FOREPERSON: Yes.

25 THE CLERK: Juror No. 2, is that your verdict?

1 JUROR NO. 2: Yes.

2 THE CLERK: Juror No. 3, is that your verdict?

3 JUROR NO. 3: Yes.

4 THE CLERK: Juror No. 4, is that your verdict?

5 JUROR NO. 4: Yes.

6 THE CLERK: Juror No. 5, is that your verdict?

7 JUROR NO. 5: Yes.

8 THE CLERK: Juror No. 6, is that your verdict?

9 JUROR NO. 6: Yes.

10 THE CLERK: Juror No. 7, is that your verdict?

11 JUROR NO. 7: Yes.

12 THE CLERK: Juror No. 8, is that your verdict?

13 JUROR NO. 8: Yes.

14 THE CLERK: Juror No. 9, is that your verdict?

15 JUROR NO. 9: Yes.

16 THE CLERK: Juror No. 10, is that your verdict?

17 JUROR NO. 10: Yes.

18 THE CLERK: Juror No. 11, is that your verdict?

19 JUROR NO. 11: Yes.

20 THE CLERK: Juror No. 12, is that your verdict?

21 JUROR NO. 12: Yes.

22 THE CLERK: Members of the jury, listen to your  
23 verdict as it stands recorded. You and each of you say  
24 that you find the defendant guilty of manslaughter in the  
25 first degree and so say you all.

1 THE COURT: Madam forelady, ladies and gentlemen  
2 of the jury, when we first came together, now it seems like  
3 a long time ago, you've been here for several weeks. When  
4 we first came together, you recall we spoke about that  
5 gentleman who lived just close by, Gouverneur Morris,  
6 described in our constitutional document, the sacrosanct  
7 and sacred right of trial by jury.

8 Your participation, your deliberation, your  
9 attendance to your civic duties, your rendering of a  
10 verdict continues to breed life into that right. You leave  
11 with the profound thanks of the Court. You are free to go.  
12 You may follow the officer.

13 COURT OFFICER: Jury exiting.

14 (Whereupon, the jury left the courtroom.)

15 THE COURT: Jury having been excused, Mr.  
16 District Attorney.

17 MR. ROSENFELD: Yes, your Honor. I don't believe  
18 we marked the last note from the jury a court's exhibit.

19 THE COURT: I believe we did.

20 MR. ROSENFELD: For the record, I've looked at it  
21 and I believe defense counsel looked at it also.

22 THE CLERK: Yes.

23 MR. ROSENFELD: Okay.

24 THE COURT: Okay. It's done. Applications?

25 MR. ROSENFELD: Before August 1st, your Honor, if

1 it's possible.

2 MR. CANTOR: The earliest you can do it, Judge.

3 THE COURT: The earliest would appear to be  
4 September 20th.

5 MR. ROSENFELD: September?

6 THE COURT: I mean August 20th.

7 MR. ROSENFELD: I'm not going to be here, Judge.  
8 There's no way we can do before August 1st?

9 THE COURT: They'll never have the report.

10 MR. CANTOR: It's a in case.

11 THE CLERK: We can try it.

12 THE COURT: You want to try?

13 MR. CANTOR: Yeah, sure.

14 THE COURT: How's Thursday, August 2nd?

15 MR. ROSENFELD: That's good for the People. Can  
16 we ask for 2 o'clock please, that way we know if the  
17 defendant is produced in the morning?

18 MR. CANTOR: Can I have August 1st?

19 THE COURT: Yes.

20 MR. CANTOR: Thank you.

21 MR. ROSENFELD: August 1st is Wednesday.

22 THE COURT: Yes, let me doublecheck. Is that  
23 okay for you, Mr. District Attorney?

24 MR. ROSENFELD: Can we do it at 2 p.m.?

25 MR. CANTOR: Judge, at 2 p.m. I'll come here at

1 noon.

2 MR. ROSENFELD: Noon.

3 THE COURT: Okay. Is that okay?

4 MR. CANTOR: I'll come here at noon.

5 Just for the record, it's our position that by  
6 virtue of the guilty verdict of manslaughter in the first  
7 degree, under the doctrine of implied acquittal, the first  
8 count is deemed an acquittal, that being murder in the  
9 second degree. But that is something for another court for  
10 another day and I would just put it on the record now.

11 THE COURT: All right, Mr. Cantor, Mr. Rosenfeld,  
12 August 1st, noon.

13 MR. ROSENFELD: I have 12 o'clock, August 1st.

14 THE COURT: That will be the day.

15 MR. CANTOR: What is that?

16 THE COURT: That will be the day.

17 MR. CANTOR: Thank you for your courtesies.

18 MR. ROSENFELD: Thank you.

19 (Whereupon, this concludes the trial.)

20

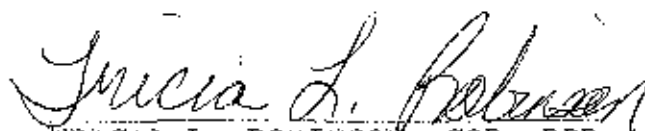
21 THE FOREGOING IS CERTIFIED TO BE

22 A TRUE AND ACCURATE TRANSCRIPT.

23

24

25

  
TRICIA L. ROBINSON, CSR, RPR  
Senior Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : CRIMINAL TERM - PART: T-14

----- X

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment #0027/2010

- against -

Sentence

DAVID DELGADO,

Defendant.

----- X

August 1, 2012

265 East 161st Street  
Bronx, New York 10451

**FILED**

AUG 30 2013

B E F O R E:

HONORABLE DOMINIC R. MASSARO,

J U S T I C E

SUP. COURT, APP. DIV.  
FIRST DEPT.

A P P E A R A N C E S:

ROBERT T. JOHNSON, ESQ.,  
District Attorney - Bronx County  
BY: PAUL ROSENFELD, ESQ.,  
Assistant District Attorney

ROBERT CANTOR, ESQ.  
Attorney for the Defendant

TRICIA L. ROBINSON, CSR, RPR  
Senior Court Reporter



## Sentence

(Whereupon, the following takes place, on the record, in open court, in the presence of the Court, the assistant district attorney, defense counsel and the defendant.)

COURT OFFICER: Coming out.

MR. CANTOR: Judge, I need him un-handcuffed. He has to sign some documents.

THE COURT: Please. All right. Call the case.

THE CLERK: This is sentence matter on the calendar --

THE COURT: Is he uncuffed, the gentleman?

COURT OFFICER: No.

THE COURT: You just want him uncuffed to sign the piece of paper?

MR. CANTOR: No.

THE COURT: For the sentencing?

MR. CANTOR: Yes.

COURT OFFICER: Judge, I'm not comfortable with that.

THE COURT: We're not able to uncuff him.

THE CLERK: This is 0027 of 2010, David Delgado. Appearances, please.

MR. CANTOR: Robert Cantor for Mr. Delgado.

MR. ROSENFELD: Paul Rosenfeld for the People.

THE COURT: Do you need a little more time?

## Sentence

1 MR. CANTOR: No.

2 THE COURT: Mr. Clerk.

3 THE CLERK: David Delgado, you're being arraigned  
4 for sentence on your conviction of manslaughter in the  
5 first degree.

6 Before the Court pronounces judgment, the Court  
7 will accord the district attorney, your attorney and  
8 yourself an opportunity to make a statement with respect to  
9 any matter relevant to the question of sentence.

10 People.

11 MR. ROSENFELD: Yes, your Honor. Before the  
12 People begin, Ms. Sherry Talavera who is the sister of the  
13 deceased George Talavera would like to present a statement  
14 to the Court. It will be two statements, one is on behalf  
15 of the deceased's daughter Nylah Talavera who is a young  
16 girl, she's nine years old. She'll read to her behalf.

17 I submitted to the Court a copy of the three-page  
18 statement that Ms. Talavera would like the Court to  
19 acknowledge. She won't read the whole statement even  
20 though she would like to. She'll just read the first and  
21 last paragraphs. And I submit to the Court the entire  
22 statement to the Court.

23 THE COURT: You have done that and the Court has  
24 read over both statements; however, the lady is certainly  
25 welcome to add anything she wishes at this moment.

## Sentence

1 MS. TALAVERA: Good afternoon, your Honor.

2 THE COURT: Good afternoon, ma'am.

3 MS. TALAVERA: This is in regard to my niece  
4 Nylah Talavera.

5 THE COURT: Yes, ma'am.

6 MS. TALAVERA: "My name is Nylah Talavera."

7 THE COURT: Start all over. Put your name.

8 MS. TALAVERA: My name is Sherry Talavera. I'm  
9 speaking for Nylah, George Talavera's daughter.

10 THE COURT: Yes.

11 MS. TALAVERA: "My name is Nylah Talavera.

12 George Talavera was my father. He always had a smile on  
13 his face and never doubted anything I said. He loved me  
14 and took me places. For my first and second birthday, he  
15 rented me a clown, a pony and even a magician. This party  
16 was at Pelham Bay. I miss walking and taking the bus with  
17 him. Dad always picked me up from school and dropped me  
18 off. Every time I saw him in the yard to pick me up, I'll  
19 tell my teacher and then I would run to him. He would  
20 carry me on his shoulders. In the summer I went fishing  
21 with him and would have my own fishing rod. On one  
22 vacation to Florida, I caught baby fish and my dad was so  
23 proud of me. We would always take long walks to Pelham Bay  
24 and sit on the rocks by the beach. Now we can't do all the  
25 fun things we done" -- excuse me.

Sentence

1 THE COURT: Take your time.

2 MS. TALAVERA: "Every night I look at pictures of  
3 him and I think in my head why did this happen to such a  
4 good person. Why? He was the best father in the world and  
5 no one can replace his number one spot -- his number one  
6 spot in first place. I miss him so much. When my mom  
7 first told me, I told her these exact words, you're lying,  
8 then she put on the news and then I saw the newspaper and I  
9 really thought I was dreaming it. I just sat there crying  
10 on Christmas Day. From that day on, I hated Christmas  
11 wanting to have nothing to do with it because on Christmas  
12 all I think about is my dad. I hate Christmas and I always  
13 will. No one will stop me from that."

14 THE COURT: Thank you. Thank you for reading  
15 that one. Yes, ma'am, anything further?

16 MS. TALAVERA: I have me and my sister's  
17 statement.

18 THE COURT: Yes.

19 MS. TALAVERA: "I would like to reintroduce my  
20 brother George Talavera. He was born on July 16, 1976. He  
21 was killed on December 25, 2009. In the early hours around  
22 3:20" --

23 THE COURT: Just take your time, ma'am.

24 MS. TALAVERA: -- "we received a call. I didn't  
25 answer the phone. It was our sister-in-law on the other

1 end of the phone and I heard her when she stated that  
2 George was killed. I jumped out of my bed and screamed,  
3 no, no, this cannot be happening. I got dressed, left my  
4 home in Pennsylvania and drove to the Bronx. The police  
5 didn't want to give us information. The first stop was 900  
6 Fteley Avenue in the Bronx at the 43rd Precinct. When I  
7 arrived at the precinct, the officers told us to wait until  
8 the officer comes back from the crime scene.

9 We were seated for 45 minutes to an hour which  
10 felt like three hours with no answer until Officer McSloy  
11 calls my husband and I into the office. He stated that  
12 George was in an altercation and as a result he was fatally  
13 stabbed in the neck which caused his death. My heart sunk.  
14 It was true. Our brother is gone. I asked why. What  
15 happened? Who did this? Three questions with no answer.  
16 I remember McSloy stated they were going to work really  
17 hard on the case.

18 I asked Officer McSloy where is my brother's  
19 body. I need to see. He stated you won't be able to see  
20 him. I said you don't understand. I need to see my  
21 brother. So as soon as I left the precinct I drove to  
22 Parkchester. I seen a cop car, went in the building on  
23 2033 McGraw Avenue in the Bronx. As I waited for someone  
24 to open the door, I went to open the door. From the  
25 stairwell, I seen the cops and the medical examiner

1 carrying George down the stairs. I told them that he was  
2 my brother and I need one minute with him and I quickly  
3 leaned on his chest and said our family prayer Psalm 23,  
4 the Lord is my Shepherd.

5 Once I finished I walked away. I caught myself.  
6 I can't leave. I can't turn my back on my brother. Our  
7 love for one another is too strong for me to just walk away  
8 so I turned around and walked with the cops and the medical  
9 examiner until they put my brother's body in the van. That  
10 was when reality hit me. He's gone, our best friend, our  
11 hero, our brother is gone."

12 And the last --

13 MR. ROSENFELD: She's going to read the last  
14 paragraph.

15 THE COURT: Yes, ma'am.

16 MS. TALAVERA: "It's been a long journey. Every  
17 moment that goes by is still hard. We have our days full  
18 with rain, tears and heart break. It sometimes feels like  
19 a nightmare and I find myself questioning myself. Is it  
20 real? And then everything comes back to me. It's not a  
21 dream, it's reality. Our brother is gone. And all we have  
22 is the things he left behind.

23 I thank God for his daughter. We are a big part  
24 of her life. We take her every summer for a couple of  
25 weeks. We do family things, parks, beach, pool, shopping

1 and our favorite amusement parks. Last year we went to  
2 Dorney, this year we went to Sesame Place and next year  
3 we're going to Disney. George would have done the same  
4 thing for my kids. Growing up that's one place we always  
5 wanted to experience. Next year it will be a dream. It  
6 will become a reality and I will experience it with his  
7 daughter. We learn life is short, live for today. He --  
8 David, you may have took our holidays, but he didn't take  
9 our dream. My family will never forgive you even though  
10 the Bible tells us to. You have a nice life in jail."  
11 That's it, your Honor.

12 THE COURT: Thank you for your statement, ma'am.  
13 You may be seated.

14 MS. TALAVERA: Thank you.

15 THE COURT: Mr. District Attorney.

16 MR. ROSENFELD: Thank you, Ms. Talavera. The  
17 Court is aware of this defendant's background. November  
18 1991 he was convicted of attempted robbery in the third  
19 degree and sentenced to one to three years; however, he  
20 bench warranted, wasn't sentenced until 2005. In 2006, he  
21 had a parole violation, was re-admitted January 19 of 2007.  
22 As the Court also heard the whole entire Sandoval  
23 application and is aware that in Puerto Rico in 2007 he had  
24 a conjugal abuse case in Puerto Rico.

25 I won't re-hash the facts of this case, your

1 Honor. This was Christmas Eve. This was a day of  
2 celebration, December 25, 2009, men, women, children were  
3 at a party at 2033 McGraw Avenue doing nothing more than  
4 anticipating Christmas morning.

5 The defendant was an invited guest of one of the  
6 people who was friends with everybody, everyone else. He  
7 was at that party. The Court heard the confrontation  
8 between the defendant and the deceased. I won't go into  
9 it. I'll just incorporate what the Court heard as facts at  
10 the trial.

11 The defendant actually left the party and then  
12 went to another apartment, took a knife and returned to the  
13 party. He continued to stay at the party. When the  
14 deceased confronted him another time, it's clear the  
15 deceased was drunk and he was loud, but nevertheless the  
16 deceased was harmless. He never threatened, physically  
17 never threatened the defendant physically with any type of  
18 weapon, never struck the defendant in any way.

19 The defendant had no reason to believe that the  
20 deceased would cause him any harm. And as we know, the  
21 deceased wasn't harmed, but this defendant had a knife on  
22 him. He could have walked right out of that apartment at  
23 the moment he struck the deceased, but he chose to remain  
24 there and he pulled out the knife with no reason to use the  
25 knife and he stabbed the deceased five times around his



1 head and face, most specifically in the jugular, the  
2 carotid artery right in front of the children, the women  
3 and the men at this party.

4 Then what did the defendant do? He left George  
5 Talavera to die at the party. He left the apartment. He  
6 took a cab, went back to the safety of his own home in  
7 Brooklyn and hid out there until the police came to arrest  
8 him the following day.

9 This was a senseless murder, your Honor. The  
10 jury heard all the evidence. They found him guilty of  
11 manslaughter in the first degree. And it's the People's  
12 position, your Honor, prior to trial the Court is aware the  
13 defendant had been offered 24 years on a manslaughter  
14 charge by the People to spare the family the trauma of  
15 going through the witnesses and the defendant, as is his  
16 right, chose to go to trial and the jury convicted him of  
17 manslaughter in the first degree.

18 The maximum sentence for manslaughter in the  
19 first degree is 25 years in prison. The People urge this  
20 Court to sentence the defendant to the 25 years maximum  
21 sentence, plus five years of post-release supervision.

22 THE CLERK: Would defense counsel like to make a  
23 statement?

24 MR. CANTOR: I would, please, your Honor.

25 THE COURT: Yes, sir.

1 MR. CANTOR: Judge, I don't envy the duty that  
2 you have to perform this afternoon. It is undoubtedly the  
3 hardest thing that a Judge must do. And I appreciate your  
4 care, your concern, your compassion for both sides in this  
5 case. To be plain about it, it's not a simple thing that  
6 you're about to do.

7 I think in structuring a just sentence, your  
8 Honor has to consider both the defendant and the deceased,  
9 their individual characteristics, their history and the  
10 behavior that attended to the fatal event.

11 David Delgado presently has a history that's very  
12 sad. As a young man, he was sexually abused by his  
13 step-father. He told the jury that. And that your Honor  
14 can appreciate as a jurist of long-standing, you can  
15 appreciate the impact that that must have had on Mr.  
16 Delgado. Three times he attempted suicide. We know now  
17 because it wasn't until the mid 1990's that he was  
18 diagnosed suffering from bipolarity and depression. We  
19 know now what drove him to such extreme acts. You're  
20 dealing with a man who was twice mentally institutionalized  
21 and who has lived with depression and bipolarity for most  
22 of his life.

23 The probation report is a farce. The probation  
24 officials in this sort of a case should themselves be tried  
25 for criminal negligence. It provides your Honor with no

1 insight. It is empty of anything. It speaks to the  
2 entirety of the issue that you will soon resolve, mainly,  
3 the extent of the sentence.

4 My client has for a long period of time been on  
5 mood stabilizers and anti-depressants such as Depakote and  
6 Risperdal. These are strong medicines. These are given to  
7 people who have serious flaws in chemistry. The fact that  
8 my client suffers from depression is not a flaw in his  
9 character, but a flaw in his chemistry.

10 We move to December 24, 25, 2009. My client from  
11 all of the evidence adduced at trial did not enter that  
12 party with any intent to do harm, with any intent to cause  
13 any injury to any attendee at that party. As a matter of  
14 fact, the evidence indicates from his girlfriend at the  
15 time who testified as the People's witness that he was  
16 reluctant to go to the party. One of the aspects of  
17 depression is isolation. And you know that as I said being  
18 a jurist and a practitioner yourself of long-standing, but  
19 it was for his girlfriend so he went.

20 What the district attorney fails to mention in  
21 his oral presentation to the Court, it's unclear whether it  
22 was three, four or five times, but on each occasion at the  
23 party the deceased confronted and threatened my client to  
24 do him physical harm. Over what? Over my client's  
25 hypothetical disabuse and disrespect of his girlfriend who

## Sentence

1 was known to the deceased? No doubt the deceased was  
2 drunk, also had traces of marijuana, had significant amount  
3 of alcohol. Significant. More than three times the legal  
4 limit for driving while intoxicated. Did my client in any  
5 way, shape, manner or form cause these confrontations? No.  
6 Did my client in any way, shape, manner or form solicit  
7 these confrontations? No. But yet they occurred.

8 And each time they occurred, given his  
9 impressionable mind, given his mental state, given his  
10 notions that perhaps are exaggerated due to his depression  
11 and bipolarity when he became convinced that he was a ripe  
12 target for physical harm and perhaps all serious physical  
13 harm, do I count taking a knife from Margie's apartment?  
14 No, no. But I don't stand nor did I stand in the shoes of  
15 a depressed individual, a bipolar individual, an individual  
16 who has been youthfully sexually abused, who had attempted  
17 suicide three times and twice been mentally incarcerated.

18 My father is an immigrant from Eastern Europe.  
19 His English was halting. So when you describe someone who  
20 was troubled by that which makes my client, he would say he  
21 was not a finished product. And Mr. Delgado is not a  
22 finished product. He carries all of this, all of this  
23 history and present mental impairment with him.

24 So we have the deceased provoking him. I'm not  
25 here to desecrate. I'm not here to destroy or disseminate

## Sentence

1 the image or the figure of the deceased, but I'm here to  
2 tell you that the deceased, although physically perhaps not  
3 the aggressor was certainly confrontational, repeatedly the  
4 aggressor in threatening serious physical harm to my client  
5 who himself had consumed a sufficient degree of alcohol.  
6 The evidence is clear on that, yet your Honor decided not  
7 pursuant to my application to charge intoxication. We  
8 noted our exceptions. This is a trial issue. I say no  
9 more about it here.

10 My client had no intent as he testified to kill  
11 the deceased. He had no intent to inflict serious physical  
12 harm upon the deceased. He did have a fervent and fixed  
13 and focused intent to distance himself from the deceased  
14 and so he swung out wildly as he said on the stand. On the  
15 stand in his very mundane words, he just wanted to get  
16 away, he wanted to get out of harm's way. And so he  
17 perceived the deceased as immediately and then presently  
18 threatening to his welfare, his bodily welfare so he swung  
19 out wildly. He said he sort of blacked out, but no doubt  
20 he struck five times.

21 He's not a physician. He's not a pathologist.  
22 He doesn't know where the carotid artery is or where the  
23 jugular vein is. He just struck out wildly. He will speak  
24 for himself. But I'm going to suggest the evidence does  
25 not manifest and does not demonstrate an intent to cause

1 serious physical injury because that's what the jury found.  
2 They acquitted him. So when the DA uses the word murder in  
3 his presentation, that's contrary to the jury's verdict in  
4 this case. He was not convicted of murder. He was  
5 convicted of manslaughter in the first degree, which  
6 embodies an intent to inflict serious physical harm so he  
7 struck out wildly because he was in fear of his own  
8 welfare, his own physical well-being.

9 He didn't flee New York. He was scared. He was  
10 frightened. He was bipolar. He's depressed. He didn't  
11 seek to evade the authorities. He went home and stayed up  
12 all night. As he told you on the witness stand the police  
13 within 24, 36 hours apprehended him and what did he do? He  
14 behaved like a gentleman. According to Detective Banker,  
15 he followed all police directives. He went further than  
16 that. He according to the evidence made oral and written  
17 videotaped statements to the authorities.

18 He has a criminal record, Judge. He's a man with  
19 a feeble mind. Impressionable, yes. Troubled, yes.  
20 Flawed, yes. And there was no charge. Then you denied my  
21 application for manslaughter in the second degree based on  
22 the theory of reckless. You denied my application for a  
23 charge with respect to criminally negligent homicide. His  
24 actions based upon the totality of the record speak more to  
25 those two charges than they do to manslaughter in the first

1 degree. But of course the jury had no opportunity to  
2 consider manslaughter in the second degree, reckless  
3 homicide or criminally negligent homicide. Your Honor  
4 simply denied my application to charge that.

5 The truest strain, Judge, of justice can only  
6 encompass an element of clemency, the truest purest form.

7 I'll end my remarks and I'll tell you what I  
8 would do. The then district attorney of Bronx County was  
9 Burton Bennett Roberts, and a former district attorney of  
10 Queens County Thomas Meckell had been indicted and the  
11 special prosecutor was trying the case in the old  
12 historical courthouse in Long Island City. I'm sure your  
13 Honor is well aware of that structure, its historical  
14 significance.

15 And the then district attorney Burton Roberts  
16 testified as a character witness on behalf of a former  
17 district attorney of Queens County Thomas Meckell and he  
18 was besieged by the press as he was leaving that  
19 courthouse, and he was asked by the press what he had done.  
20 What was his purpose? What was his purpose in being there  
21 that day? And the then district attorney of Bronx County  
22 simply replied to the camera, people and the reporter,  
23 though I've injected hopefully a strain of mercy because  
24 justice in its purest sense must incorporate a strain of  
25 mercy and he left.

1 And the post-script to that story is that the  
2 special prosecutor wrote a letter to the disciplinary  
3 committee accusing Mr. Roberts then of impeding and  
4 impairing the course of justice, and yet as often as he  
5 told us, as I worked under him at that time, he was seeking  
6 to do justice that day for the erstwhile district attorney  
7 of Queens County and I ask you to do justice here this  
8 afternoon for Mr. Delgado. Thank you.

9 THE COURT: Mr. Clerk.

10 THE CLERK: Mr. Delgado, would you like to make a  
11 statement?

12 THE DEFENDANT: Yes, I would.

13 THE COURT: Please.

14 THE DEFENDANT: Your Honor, I never thought I  
15 would find myself in a situation like this and sometimes I  
16 just wish I was dead. My intention was never to take his  
17 life or to harm him. All I just want him to get off of me.  
18 I didn't know what I was doing at the time. I'm very, very  
19 sorry for what happened to George. I just hope one day his  
20 family will forgive me, you know, there's nothing I could  
21 say that is gonna comfort to them. The only person that  
22 could do that is God. I just hope one day God and I will  
23 pray that he will and I just, I'm very, very sorry for the  
24 loss of your brother. It wasn't my intentions to do that.

25 THE COURT: Thank you. Thank you, sir. David



1 Delgado, you having been found guilty by a jury of your  
2 peers to the crime of manslaughter in the first degree with  
3 the intent to cause serious physical injury which resulted  
4 in death. This was a dastardly crime.

5 The Court is intimately aware of the evidence  
6 brought against you and the arguments otherwise amplified  
7 to by your counsel on your behalf, and yet it's difficult  
8 for the Court to overlook the fact that your vicious crime  
9 has snuffed out a life, a man, everything that he was,  
10 everything that he could have been to himself, to his loved  
11 ones. Society cannot tolerate the kind of reaction that  
12 resulted in your criminally culpability as determined by  
13 the jury.

14 The Court does sentence you to a period of  
15 durance the maximum as requested by the People 25 years,  
16 visits upon you at the time should you come to be released  
17 five years of post-release supervision, visits upon you as  
18 is required by law the mandated fees of three hundred and  
19 twenty-five dollars to be deducted from all earnings at one  
20 hundred percent while incarcerated until fully paid.

21 The Court delivers you over for transportation to  
22 the appropriate penitentiary so that you may complete your  
23 sentence, assigns to you whatever credits heretofore of  
24 incarceration can be credited in remission of the sentence  
25 of 25 years.

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Gentlemen, thank you.

MR. ROSENFELD: Thank you, Judge.

\* \* \*

THE FOREGOING IS CERTIFIED TO BE

A TRUE AND ACCURATE TRANSCRIPT.

  
TRICIA L. ROBINSON, CSR, RPR  
Senior Court Reporter